

In The Matter Of:

*Free Speech Coalition, Inc., et al vs.
The Honorable Eric H. Holder, Jr.*

*SSA Charles Joyner
April 12, 2013*

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<p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE EASTERN DISTRICT OF PENNSYLVANIA 3 FREE SPEECH COALITION, * 4 INC., et al, * 5 * 6 Plaintiffs, * CASE NO. 2:09-4607 7 vs. * 8 * JUDGE MICHAEL M. BAYLSON 9 THE HONORABLE ERIC H. * 10 HOLDER, JR., Attorney * 11 General. * 12 Defendant. * 13 ***** 14 ORAL DEPOSITION OF 15 SSA CHARLES JOYNER 16 APRIL 12, 2013 17 ***** 18 ORAL DEPOSITION of SSA CHARLES JOYNER, 19 produced as a witness at the instance of the 20 Plaintiffs, and duly sworn, was taken in the 21 above-styled and numbered cause on the 12th day of 22 April, 2013, from 8:58 a.m. to 4:11 p.m. before me, 23 Jodi Wells, CSR, in and for the State of Texas, 24 reported by machine shorthand, at the U.S. Attorney's 25 Office, 1000 Louisiana, Suite 2300, Houston, Texas 77002, pursuant to Notice and the Federal Rules of Civil Procedure and the provisions stated on the record attached hereto.</p>	<p>1 INDEX 2 Appearances 2 3 Stipulations 1 4 SSA CHARLES JOYNER 5 Examination by Mr. Murray 6 6 Examination by Ms. Wyer 267 7 Further Examination by Mr. Murray 268 8 Changes and Signature 275 9 Reporter's Certificate 277 10 11 EXHIBITS 12 No. Description Page 13 1 Regulatory Inspection Report of 6 14 The Agency 8/20/2007 15 2 Regulatory Inspection Report of 6 16 Bacchus Video Releasing, Inc. 6/19/2007 17 3 Regulatory Inspection Report of 6 18 Darkside Entertainment 9/12/2006 19 4 Regulatory Inspection Report of 6 20 A. Lords Productions, LLC 9/17/2007 21 5 Regulatory Inspection Report of 6 22 All Good Video 8/16/2006 23 6 Regulatory Inspection Report of 6 24 Angry Young Man 3/27/2007 25 7 Regulatory Inspection Report of 6 Shooting Star Video 8/22/2007 8 Regulatory Inspection Report of 6 Candid Cam Productions 9/18/2007</p>
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<p>1 APPEARANCES 2 3 FOR THE PLAINTIFFS: 4 Mr. J. Michael Murray 5 BERKMAN, GORDON, MURRAY & DEVAN 6 55 Public Square, Suite 2200 7 Cleveland, Ohio 44113-1949 8 Telephone: (216) 781-5245 9 Facsimile: (216) 781-8207 10 11 FOR THE DEFENDANT: 12 Ms. Kathryn L. Wyer 13 U.S. Department of Justice, Civil Division 14 20 Massachusetts Avenue Northwest 15 Washington, D.C. 20001 16 Telephone: (202) 616-8475 17 Facsimile: (202) 616-8470 18 and 19 Mr. David M. Samonds 20 U.S. Department of Justice 21 Civil Litigation Unit 22 935 Pennsylvania Avenue Northwest 23 Room PA-400 24 Washington, D.C. 20535 25 Telephone: (202) 220-9308 Facsimile: (202) 220-9341</p>	<p>1 9 Regulatory Inspection Report of 6 2 Cinema Play Entertainment 6/27/2007 3 10 Regulatory Inspection Report of 6 4 Darkside Entertainment 4/9/2007 5 11 Regulatory Inspection Report of 6 6 Dead Men Hanging Productions 3/13/2007 7 12 Regulatory Inspection Report of 6 8 Diabolic Video Production 7/24/2006 9 13 Regulatory Inspection Report of 6 10 Don Goo Enterprises 5/22/2007 11 14 Regulatory Inspection Report of 6 12 Erotic Angel 12/19/2006 13 15 Regulatory Inspection Report of 6 14 Evasive Angles 9/27/2006 15 16 Regulatory Inspection Report of 6 16 Ghost Pro Productions, Inc. 9/18/2007 17 17 Regulatory Inspection Report of 6 18 Gentlemen's Video 7/19/2007 19 18 Regulatory Inspection Report of 6 20 Real Wild Girls (RWG) Media, Inc. 9/17/2007 21 19 Regulatory Inspection Report of 6 22 Moonlight Entertainment 5/3/2007 23 20 Regulatory Inspection Report of 6 24 Pony Boy Films 9/19/2007 25 21 Regulatory Inspection Report of 6 22 Private 11/16/2006 23 22 Regulatory Inspection Report of 6 24 Robert Hill Releasing Company 8/1/2006 25</p>

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<p style="text-align: right;">Page 6</p> <p>(08:58-08:59)</p> <p>1 (Exhibit Nos. 1 through 44 premarked)</p> <p>2 SSA CHARLES JOYNER,</p> <p>3 having been duly sworn, testified as follows:</p> <p>4 EXAMINATION</p> <p>5 BY MR. MURRAY:</p> <p>6 Q. Would you please state your full name and</p> <p>7 address for the record, sir?</p> <p>8 A. Charles R. Joyner, J-O-Y-N-E-R, address P.O.</p> <p>9 Box 571073, Houston, Texas 77257.</p> <p>10 Q. Now, Agent Joyner, I'm going to ask you a</p> <p>11 series of questions and I'm going to do the best I can</p> <p>12 to make them clear and understandable.</p> <p>13 A. I'm no longer an agent.</p> <p>14 Q. That's all right. I think you're entitled --</p> <p>15 A. Oh, okay.</p> <p>16 Q. -- to the respect of that title still.</p> <p>17 A. Thank you.</p> <p>18 Q. And I'm going to try to make my questions</p> <p>19 clear and understandable. Can I have your agreement,</p> <p>20 however, that if you do not understand one of my</p> <p>21 questions you will bring that to my attention?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Thank you. The next request I have of you is</p> <p>24 to make sure that all your answers are verbal rather</p> <p>25 than gestures so that our court reporter can record</p>	<p style="text-align: right;">Page 8</p> <p>(09:00-09:01)</p> <p>1 from the Government service?</p> <p>2 A. October of 2011.</p> <p>3 Q. And, briefly, why don't you tell me what your</p> <p>4 career was in the Government, what assignments?</p> <p>5 A. With the FBI?</p> <p>6 Q. Well, even before that. Where did you start</p> <p>7 out?</p> <p>8 A. With the Federal Government, I started with</p> <p>9 the CIA.</p> <p>10 Q. Okay.</p> <p>11 A. That was 1983 to 1987. I joined the FBI in</p> <p>12 1987 and was assigned to Los Angeles primarily working</p> <p>13 violent crimes. Later I was on the SWAT team. I then</p> <p>14 became a full-time firearms instructor, later the</p> <p>15 principal firearms instructor, which meant I was in</p> <p>16 charge of all the firearms defensive tactics, chemical</p> <p>17 agent training.</p> <p>18 After that I became a supervisor over training</p> <p>19 and the critical incident programs. And critical</p> <p>20 incident programs are SWAT, bomb techs, HazMat, WMD.</p> <p>21 From there I became the supervisor over the 2257</p> <p>22 program.</p> <p>23 Q. Okay. And, so, how many years did you spend</p> <p>24 in the FBI? From '87 to '11? Is that what you're</p> <p>25 saying?</p>

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<p style="text-align: right;">Page 9</p> <p>(09:01-09:02)</p> <p>1 A. Yes, sir.</p> <p>2 Q. Okay. So, in 2006, where were you stationed</p> <p>3 when this program began?</p> <p>4 A. In Los Angeles.</p> <p>5 Q. And what was your assignment before this</p> <p>6 program? Just general duties?</p> <p>7 A. I was a supervisor over training in the</p> <p>8 critical incident programs.</p> <p>9 Q. Okay. And tell me how you got involved in</p> <p>10 2006 in the 2257 inspection program.</p> <p>11 A. The FBI was told to set up an inspection</p> <p>12 program, and I was tasked with doing that.</p> <p>13 Q. So you were the one in charge of putting the</p> <p>14 program together?</p> <p>15 A. Initially there were two supervisors that were</p> <p>16 named to start the program. The other supervisor had</p> <p>17 other duties that he couldn't get away with -- get</p> <p>18 away from. So I was primarily responsible for setting</p> <p>19 up the training and the policy and the buildings and</p> <p>20 the supplies, and then later they advertised for a</p> <p>21 second supervisor to come in.</p> <p>22 Q. And who did that end up being?</p> <p>23 A. Steve Lawrence.</p> <p>24 Q. And he was a Supervising Special Agent as</p> <p>25 well?</p>	<p style="text-align: right;">Page 11</p> <p>(09:04-09:05)</p> <p>1 Q. (Indicating)</p> <p>2 A. Okay.</p> <p>3 MS. WYER: Objection.</p> <p>4 Q. (By Mr. Murray) So this statute requires</p> <p>5 every producer of books, magazines, periodicals,</p> <p>6 films, videotapes or other matter to create records,</p> <p>7 correct, if they contain sexual images that are actual</p> <p>8 sexually explicit conduct?</p> <p>9 A. Okay.</p> <p>10 Q. Is that your understanding of the statute?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Okay. And it requires the producer to collect</p> <p>13 IDs from any performers in films or other media that</p> <p>14 has sexually explicit conduct, correct?</p> <p>15 A. Yes, sir.</p> <p>16 Q. It requires them to maintain the records,</p> <p>17 correct?</p> <p>18 A. Yes, sir.</p> <p>19 Q. To maintain them by title and name of</p> <p>20 performer, correct?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Cross-index them as well, correct?</p> <p>23 A. Yes, sir.</p> <p>24 Q. Okay. It also requires them to put a label on</p> <p>25 the book, the film, or in the case of a computer web</p>
<p style="text-align: right;">Page 10</p> <p>(09:02-09:04)</p> <p>1 A. Yes, sir.</p> <p>2 Q. And when did he come on-board approximately?</p> <p>3 A. I don't remember. We started, I believe, in</p> <p>4 May of 2006. I think he came on-board, I'm guessing,</p> <p>5 November, December 2006, but I'm not certain.</p> <p>6 Q. Okay. Now, as a consequence of being assigned</p> <p>7 to put this program together, you needed to</p> <p>8 familiarize yourself with 2257 and its implementing</p> <p>9 regulations, did you not?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Okay. And I want to show you what has been</p> <p>12 marked as Plaintiff's Exhibit 44.</p> <p>13 MS. WYER: Could I have a copy?</p> <p>14 MR. MURRAY: You know, I do have an extra</p> <p>15 copy of this. I don't have an extra copy of these</p> <p>16 though. I could only bring the original and one, but</p> <p>17 you have all those.</p> <p>18 MS. WYER: Well, not with me.</p> <p>19 Q. (By Mr. Murray) Plaintiff's Exhibit 44,</p> <p>20 you're familiar with that, are you not?</p> <p>21 A. I recognize it as being a 2257 statement.</p> <p>22 Q. Okay. If you go to the second page of that</p> <p>23 exhibit, you will see that this is 2257 as it existed</p> <p>24 on April 30, 2003. Do you see that?</p> <p>25 A. I don't.</p>	<p style="text-align: right;">Page 12</p> <p>(09:05-09:06)</p> <p>1 site on the web site, correct?</p> <p>2 A. That's correct.</p> <p>3 Q. Okay. And it also requires them to make</p> <p>4 records available to the Attorney General or his</p> <p>5 designee at any reasonable time, correct?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Okay. Now, do you know whether this was the</p> <p>8 statute that was in effect at the time that you began</p> <p>9 putting together the program, this version of the</p> <p>10 statute?</p> <p>11 A. I don't know. I do know that at the time I</p> <p>12 had downloaded a copy that, I believe, was dated 2006</p> <p>13 or 2007.</p> <p>14 Q. Okay. Let me show you then what has been</p> <p>15 marked as Plaintiff's Exhibit 39, and you will see</p> <p>16 that this is the version of 18 USC Section 2257 that</p> <p>17 was effective as of July 27, 2006; is that correct?</p> <p>18 A. Yes, sir.</p> <p>19 MS. WYER: Objection. No source is</p> <p>20 identified for where this document came from.</p> <p>21 MR. MURRAY: Well, if you look at the</p> <p>22 bottom, it came from Westlaw.</p> <p>23 MS. WYER: I can't read it.</p> <p>24 MR. MURRAY: Okay.</p> <p>25 Q. (By Mr. Murray) Well, anyway, does this look</p>

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<p style="text-align: right;">Page 13</p> <p>(09:06-09:08)</p> <p>1 like 2257 to you, Agent? If you want to read it,</p> <p>2 that's fine if need be in order to authenticate that</p> <p>3 this is the actual statute that was amended as of July</p> <p>4 27, 2006.</p> <p>5 A. It does look like it's portions of it. It</p> <p>6 looks a little thin, but yes.</p> <p>7 Q. Well, tell me what you think is missing from</p> <p>8 2257.</p> <p>9 A. It doesn't seem to be as complete as the</p> <p>10 previous version. So I don't know if this is just</p> <p>11 some revisions or not.</p> <p>12 Q. Well, take a look at it because it's important</p> <p>13 to make sure that we agree that this is the statute</p> <p>14 that was in effect as of July 27, 2006.</p> <p>15 A. Okay. It seems to be in a different format,</p> <p>16 but it seems to be the same document.</p> <p>17 Q. Okay. Now, I will tell you that this is the</p> <p>18 current statute just so that we're on the same page.</p> <p>19 I will represent to you that --</p> <p>20 A. July 27, 2006.</p> <p>21 Q. Yes. As a matter of fact, you know that the</p> <p>22 Adam Walsh Act was the act by which the 2257 was last</p> <p>23 amended, at least in terms of when you were in</p> <p>24 service, correct?</p> <p>25 A. I don't know if that was the last correction</p>	<p style="text-align: right;">Page 15</p> <p>(09:09-09:10)</p> <p>1 A. Yes, sir.</p> <p>2 Q. Okay. And you did that pursuant to the</p> <p>3 authority of 2257 and the implementing regulations</p> <p>4 that were in existence at the time that you carried</p> <p>5 out those duties, correct?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Okay. And the first of those inspections</p> <p>8 occurred on July 24, 2006. Does that sound right to</p> <p>9 you? And we'll go through these.</p> <p>10 A. Okay. I do recall the first one was in</p> <p>11 July --</p> <p>12 Q. Okay.</p> <p>13 A. -- 2006.</p> <p>14 Q. Every other inspection occurred, did it not,</p> <p>15 after July 27, 2006?</p> <p>16 A. I don't know the time period between the first</p> <p>17 inspection and the second inspection. I don't</p> <p>18 remember that.</p> <p>19 Q. Okay. Well, we'll go through that.</p> <p>20 A. Okay.</p> <p>21 Q. In any case, whatever version of the statute</p> <p>22 was in effect at the time that you carried out those</p> <p>23 duties was the one that you were acting pursuant?</p> <p>24 MS. WYER: Objection. Calls for a legal</p> <p>25 conclusion.</p>
<p style="text-align: right;">Page 14</p> <p>(09:08-09:09)</p> <p>1 or last amendment.</p> <p>2 Q. Okay. The July 27, 2006 version of the</p> <p>3 statute which is the current statute is the --</p> <p>4 A. Okay.</p> <p>5 Q. -- is the version that you acted pursuant to</p> <p>6 with respect to all but one of the 29 inspections that</p> <p>7 you carried out; isn't that true?</p> <p>8 MS. WYER: Objection. Objection;</p> <p>9 misleading.</p> <p>10 Q. (By Mr. Murray) You can answer. She makes</p> <p>11 objections for the record; but unless she instructs</p> <p>12 you not to answer the question --</p> <p>13 A. Okay. Could you repeat the question, please?</p> <p>14 Q. Yes. You had a program by which you carried</p> <p>15 out a certain number of inspections pursuant to 2257</p> <p>16 and its implementing regulations; isn't that true?</p> <p>17 A. That's correct.</p> <p>18 Q. And you put together that program and you</p> <p>19 ultimately were in charge of what led to a total of 29</p> <p>20 inspections; isn't that true?</p> <p>21 A. In terms of the number that we did, I don't</p> <p>22 remember, but that sounds correct.</p> <p>23 Q. Okay.</p> <p>24 A. Yes.</p> <p>25 Q. Approximately 29?</p>	<p style="text-align: right;">Page 16</p> <p>(09:10-09:11)</p> <p>1 Q. (By Mr. Murray) Is that correct?</p> <p>2 MS. WYER: The witness is not a lawyer</p> <p>3 and does not know all of the details of that kind</p> <p>4 of --</p> <p>5 MR. MURRAY: Are you going to make</p> <p>6 speaking objections throughout this deposition? You</p> <p>7 can make your objection, and you can either instruct</p> <p>8 him not to answer or let him answer; but you're not</p> <p>9 entitled to tell him the answer to give through a</p> <p>10 speaking objection.</p> <p>11 A. Could you repeat the question, please?</p> <p>12 Q. (By Mr. Murray) Sure. You acted in</p> <p>13 connection with this program pursuant to a statute</p> <p>14 known as 18 USC 2257, correct?</p> <p>15 A. Yes, sir.</p> <p>16 Q. And the regulations that implemented that</p> <p>17 statute, correct?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And you read and studied that statute and</p> <p>20 those regulations, did you not, at the time that you</p> <p>21 put this program together?</p> <p>22 A. Yes, sir.</p> <p>23 Q. And you familiarized yourself with those --</p> <p>24 that statute and those regulations so that you could</p> <p>25 act in accordance with them; isn't that true?</p>

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<p>(09:11-09:12) Page 17</p> <p>1 A. Yes, sir.</p> <p>2 Q. Now, you will see that -- if you go to the</p> <p>3 second page of Plaintiff's Exhibit 39, you will see</p> <p>4 that under (f)(5) at the very bottom it says, "It</p> <p>5 shall be unlawful (5) for any person to whom</p> <p>6 subsection (a) applies to refuse to permit the</p> <p>7 Attorney General or his or her designee to conduct an</p> <p>8 inspection under subsection (c)"; is that correct?</p> <p>9 A. Yes, sir.</p> <p>10 Q. And you knew that and were familiar with that</p> <p>11 provision, correct?</p> <p>12 A. Yes, sir.</p> <p>13 Q. And, in fact, you knew that that was a</p> <p>14 provision that was added in the amendment that became</p> <p>15 effective July 27, 2006, correct?</p> <p>16 MS. WYER: Objection.</p> <p>17 A. I wasn't aware when that was added, and I'm</p> <p>18 not -- again, we're talking about something six, seven</p> <p>19 years ago. So, when these changes occurred, I don't</p> <p>20 know.</p> <p>21 Q. (By Mr. Murray) Okay. But you acted pursuant</p> <p>22 to the authority that included that section (f)(5),</p> <p>23 correct --</p> <p>24 MS. WYER: Objection.</p> <p>25 Q. -- when you carried out most of the</p>	<p>(09:13-09:15) Page 19</p> <p>1 this title, or both," correct?</p> <p>2 A. That's correct.</p> <p>3 Q. And you know from reading that that type of</p> <p>4 penalty makes this statutory provision a felony if you</p> <p>5 violate it, correct?</p> <p>6 MS. WYER: Objection. Asked and</p> <p>7 answered.</p> <p>8 A. Yes, sir.</p> <p>9 Q. (By Mr. Murray) Is that correct?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Okay. Now, I want to show you what has been</p> <p>12 marked as Plaintiff's Exhibit 42 and ask if you can</p> <p>13 tell me whether or not you familiarized yourself with</p> <p>14 part 75 of the Code of Federal Regulations when you</p> <p>15 were carrying out your 2257 inspection program.</p> <p>16 A. This one is dated April 5, 2013. So I don't</p> <p>17 know if this has been amended since the time we were</p> <p>18 doing inspections; but, yes, we also reviewed Code of</p> <p>19 Federal Regulations 75.</p> <p>20 Q. Okay. And you can see from the -- let me show</p> <p>21 you where to look. If you'll look there --</p> <p>22 A. Okay.</p> <p>23 Q. -- it indicates that the source was an order</p> <p>24 issued on May 25, 2005, unless otherwise noted; is</p> <p>25 that correct?</p>
<p>(09:12-09:13) Page 18</p> <p>1 inspections?</p> <p>2 A. It was my understanding during the inspections</p> <p>3 that that person did not have the legal right to</p> <p>4 refuse the inspection --</p> <p>5 Q. Okay. Now, and in fact --</p> <p>6 A. -- as long as we met the parameters within the</p> <p>7 guidelines.</p> <p>8 Q. Right. And, in fact, it would be a felony for</p> <p>9 the person under this statute to refuse to permit the</p> <p>10 Attorney General or his designee to conduct the</p> <p>11 inspection, correct?</p> <p>12 A. I wasn't aware if it was a felony or a</p> <p>13 misdemeanor.</p> <p>14 Q. Well, did you -- you weren't familiar with</p> <p>15 whether or not the statutory provisions -- take a look</p> <p>16 at the last page of this statute, section (i).</p> <p>17 A. Okay.</p> <p>18 Q. Do you see it states that "Whoever violates</p> <p>19 this section shall be imprisoned for not more than</p> <p>20 five years and fined in accordance with the provisions</p> <p>21 of this title, or both. Whoever violates this section</p> <p>22 after having been convicted of a violation punishable</p> <p>23 under this section shall be imprisoned for any period</p> <p>24 of years not more than ten years but not less than two</p> <p>25 years and fined in accordance with the provisions of</p>	<p>(09:15-09:17) Page 20</p> <p>1 A. That's correct.</p> <p>2 Q. So any of -- to the extent that any of these</p> <p>3 provisions were in effect since May 24, 2005, you</p> <p>4 would have acted pursuant to whatever regulations</p> <p>5 existed as of that date, correct?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Okay. And if you turn to -- you'll notice</p> <p>8 that we've put numbers on the bottom left. We've</p> <p>9 paginated all these documents.</p> <p>10 A. Okay.</p> <p>11 Q. Turn to page 3273 of this exhibit.</p> <p>12 A. Okay.</p> <p>13 Q. And do you see that section 75.5 is the</p> <p>14 regulation pertaining to inspection of records?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Okay. And do you see that -- okay. So hold</p> <p>17 onto that. Let me show you then what has been marked</p> <p>18 as Plaintiff's Exhibit 41. And, again, can you see</p> <p>19 that that is Part 75 of the Code of Federal</p> <p>20 Regulations that was in effect as of July 1st, 2005</p> <p>21 according to the cover page?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Okay. And you were familiar with those --</p> <p>24 that version of the regulations, were you not?</p> <p>25 A. Yes, I was.</p>

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<p style="text-align: right;">Page 21</p> <p>(09:17-09:19)</p> <p>1 Q. Okay. Now, if you look at page 3265 of</p> <p>2 Plaintiff's Exhibit 41 --</p> <p>3 A. Okay.</p> <p>4 Q. -- you see that there is a provision 75.5</p> <p>5 Inspection of Records; is that correct?</p> <p>6 A. That's correct.</p> <p>7 Q. Okay. Now, if you would compare that version</p> <p>8 of the regulation with the version that is set forth</p> <p>9 in Plaintiff's Exhibit 42, can you tell me whether or</p> <p>10 not they are the same or whether there are any</p> <p>11 differences that you notice?</p> <p>12 MS. WYER: Objection. This is</p> <p>13 inappropriate.</p> <p>14 A. Okay. You're just asking about paragraph (a)?</p> <p>15 Q. (By Mr. Murray) No. 75.5.</p> <p>16 A. Oh, the entire section? Do you want me to</p> <p>17 check it word-for-word or just that the general</p> <p>18 meaning seems to be the same?</p> <p>19 Q. Well, if you can scan it, I think that my</p> <p>20 representation to you will be that it is the same, but</p> <p>21 I want you to verify that it looks to be the same to</p> <p>22 you as well so that we're on the same program here.</p> <p>23 A. Okay. It's not word-for-word the same.</p> <p>24 Q. Where do you find a difference?</p> <p>25 A. (C)(1).</p>	<p style="text-align: right;">Page 23</p> <p>(09:21-09:24)</p> <p>1 Okay. In 41, talking about inspections,</p> <p>2 "Monday through Friday, or any other time during which</p> <p>3 the producer is actually conducting," and the other 42</p> <p>4 reads, "local time, Monday through Friday, or for</p> <p>5 inspections to be held at the place of business of a</p> <p>6 producer." So, again, there's slight changes in the</p> <p>7 wording; but, again, the content seems to be the same.</p> <p>8 Q. Okay.</p> <p>9 A. Okay. There's just slight changes in some of</p> <p>10 the wording, but the meaning appears to be the same</p> <p>11 for both exhibits.</p> <p>12 Q. The slight wording changes are nonsubstantive.</p> <p>13 Is that an accurate way to put it?</p> <p>14 MS. WYER: Objection. Calls for a legal</p> <p>15 conclusion and legal knowledge.</p> <p>16 A. As a layman looking at this, to me, they have</p> <p>17 the same meaning.</p> <p>18 Q. (By Mr. Murray) Okay. What is your</p> <p>19 educational background by the way, Agent?</p> <p>20 A. I had a double major in biology and</p> <p>21 psychology. I have a master's in organizational</p> <p>22 industrial psychology.</p> <p>23 Q. And where did you achieve those degrees?</p> <p>24 A. University of West Florida.</p> <p>25 Q. All right. So, now, let's talk about the</p>
<p style="text-align: right;">Page 22</p> <p>(09:19-09:21)</p> <p>1 Q. Okay.</p> <p>2 A. Inspection shall take place on the -- what</p> <p>3 exhibit is this? Let me see. Exhibit 42.</p> <p>4 Q. Yes, sir.</p> <p>5 A. I probably lost my place. Let me see.</p> <p>6 It says, "Inspection shall take place during</p> <p>7 normal business hours," and, yet, in Plaintiff's</p> <p>8 Exhibit 41, "Inspection shall take place during the</p> <p>9 producer's normal business hours. So you just have an</p> <p>10 additional word. So it's not --</p> <p>11 Q. Yes. Correct.</p> <p>12 A. It's not verbatim the same.</p> <p>13 Q. Right. The word "producers" doesn't appear in</p> <p>14 the -- in 41.</p> <p>15 A. Okay. There are some differences in the</p> <p>16 words, but the meaning seems to be the same.</p> <p>17 Q. Can you point out some of the other</p> <p>18 differences that you found?</p> <p>19 A. Yes. In paragraph (c) -- I probably should</p> <p>20 get a pen so I can remember which one is which.</p> <p>21 Q. Sure.</p> <p>22 A. Okay. This one is 42. Is it okay if I mark</p> <p>23 on this?</p> <p>24 Q. Yeah. Sure.</p> <p>25 A. Thank you.</p>	<p style="text-align: right;">Page 24</p> <p>(09:24-09:25)</p> <p>1 regulation pertaining to inspections, and let's focus</p> <p>2 on Exhibit 41 which was the one in effect as of May</p> <p>3 23, 2005.</p> <p>4 A. Okay.</p> <p>5 Q. Under the regulation, you -- and by "you," I'm</p> <p>6 talking about you in your capacity as implementing the</p> <p>7 2257 inspection program, you and your colleagues.</p> <p>8 You were authorized to enter without delay at</p> <p>9 any reasonable time any establishment of a producer</p> <p>10 where records were maintained under 2257; isn't that</p> <p>11 true?</p> <p>12 A. Yes, sir.</p> <p>13 Q. You were authorized to do that without a</p> <p>14 warrant -- search warrant; isn't that correct?</p> <p>15 MS. WYER: Objection. Calls for legal</p> <p>16 knowledge.</p> <p>17 A. That's correct. According to the regulations,</p> <p>18 this is not a search. It's an inspection. So no</p> <p>19 warrant is necessary.</p> <p>20 Q. (By Mr. Murray) Okay. So you were authorized</p> <p>21 to conduct this operation of these inspections without</p> <p>22 a search warrant, correct?</p> <p>23 A. Yes, sir.</p> <p>24 Q. You were authorized to do it without any</p> <p>25 probable cause to believe any crime had been</p>

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<p style="text-align: right;">Page 25</p> <p>(09:25-09:26)</p> <p>1 committed, correct?</p> <p>2 MS. WYER: Objection.</p> <p>3 A. That's correct. Again, this is an inspection.</p> <p>4 It's not a criminal investigation.</p> <p>5 Q. (By Mr. Murray) Okay. This is a criminal</p> <p>6 statute, however, 2257, isn't it?</p> <p>7 A. Yes, sir.</p> <p>8 Q. It's not just a civil statute, is it?</p> <p>9 A. It's a federal statute.</p> <p>10 Q. You can go to prison for violating it,</p> <p>11 correct?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Okay. I think we agreed a violation of it is</p> <p>14 felony, did we not?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Okay. All right. So it is correct that you</p> <p>17 were authorized to enter the premises of a producer</p> <p>18 without delay, without a warrant, and without any</p> <p>19 problem cause to believe any crime had been committed;</p> <p>20 isn't that true?</p> <p>21 MS. WYER: Objection.</p> <p>22 A. That's correct.</p> <p>23 Q. (By Mr. Murray) Okay. The regulation also</p> <p>24 provides that advanced notice shall not be given to</p> <p>25 the producer whose premises you're going to enter,</p>	<p style="text-align: right;">Page 27</p> <p>(09:27-09:28)</p> <p>1 premises of a private residence within the parameters</p> <p>2 of this statute and regulation, correct?</p> <p>3 MS. WYER: Objection.</p> <p>4 A. If a company had been randomly selected for an</p> <p>5 inspection and on their 225 statement they listed that</p> <p>6 address as the location for those physical records,</p> <p>7 then we're allowed to go to that physical location to</p> <p>8 inspect.</p> <p>9 Q. (By Mr. Murray) Right.</p> <p>10 A. Yes, sir.</p> <p>11 Q. And you're allowed to do it without a search</p> <p>12 warrant and without probable cause, correct?</p> <p>13 MS. WYER: Objection.</p> <p>14 A. That's correct.</p> <p>15 Q. (By Mr. Murray) Okay.</p> <p>16 A. Because it's coming under the parameters of</p> <p>17 the 2257 inspection.</p> <p>18 Q. Right. And it is true it would be a felony</p> <p>19 for the person whose premises you sought to enter</p> <p>20 without delay to refuse to permit you to enter it and</p> <p>21 carry out the inspection, correct?</p> <p>22 MS. WYER: Objection.</p> <p>23 A. They could prevent us from going into specific</p> <p>24 areas of their home if it's at a residence if that's</p> <p>25 what they listed as the physical address for those</p>
<p style="text-align: right;">Page 26</p> <p>(09:26-09:27)</p> <p>1 correct?</p> <p>2 A. That's correct.</p> <p>3 Q. And if the records are maintained at someone's</p> <p>4 residence, you were authorized to enter there without</p> <p>5 delay and without advanced notice, correct?</p> <p>6 MS. WYER: Objection.</p> <p>7 A. By the statute, that is correct.</p> <p>8 Q. (By Mr. Murray) And by the regulation?</p> <p>9 A. That was not what was done in practice, but</p> <p>10 you're correct.</p> <p>11 Q. Okay. And by the regulation, correct,</p> <p>12 authorized to do that?</p> <p>13 A. Yes, sir.</p> <p>14 MS. WYER: Objection. "Authorized" is</p> <p>15 undefined.</p> <p>16 Q. (By Mr. Murray) And you were authorized by</p> <p>17 the statute and regulation to enter a private</p> <p>18 residence for purposes of an inspection without a</p> <p>19 search warrant and without probable cause to believe</p> <p>20 any crime had been committed, correct?</p> <p>21 A. Meeting all the parameters of the inspection</p> <p>22 and the inspection policies and procedures, yes.</p> <p>23 Q. So, it is true you were not required to obtain</p> <p>24 a search warrant and you were not required to have</p> <p>25 probable cause before you were authorized to enter the</p>	<p style="text-align: right;">Page 28</p> <p>(09:28-09:29)</p> <p>1 records, but they couldn't prevent us from seeing</p> <p>2 those records and where those records were stored</p> <p>3 based on the 2257.</p> <p>4 Q. Okay. So it is correct that it would be a</p> <p>5 felony for someone at a private residence who</p> <p>6 maintained 2257 records to refuse to permit you to</p> <p>7 carry out an inspection under the authority of 2257</p> <p>8 and its implementing regulations; isn't that true?</p> <p>9 MS. WYER: Objection. Uses legal</p> <p>10 terminology.</p> <p>11 A. It depends on where those records are located.</p> <p>12 So, if it's located in the garage, we have access to</p> <p>13 that garage to review those records. So it depends on</p> <p>14 where in that residence they kept the records.</p> <p>15 Q. (By Mr. Murray) If they're kept in the garage</p> <p>16 and the person refuses to let you enter the garage to</p> <p>17 inspect the records, that's a felony, isn't it?</p> <p>18 A. That would be a violation. Yes, sir.</p> <p>19 Q. Okay. If it's kept in the bedroom and he</p> <p>20 refuses to let you into the bedroom for purposes of</p> <p>21 inspecting the records, that's a felony, isn't it?</p> <p>22 MS. WYER: Objection.</p> <p>23 A. If that's where they listed the physical</p> <p>24 location of those records, then that's the business</p> <p>25 location in terms of inspections. Yes, sir.</p>

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(09:29-09:31)

1 Q. (By Mr. Murray) So the answer is yes?

2 **A. Yes.**

3 Q. Okay. Now, it is also true that the

4 regulation permitted you to conduct inspections during

5 normal business hours which was 9:00 to 5:00 p.m.

6 local time Monday through Friday, correct?

7 **A. That's correct.**

8 Q. Or at other times if the inspection was to be

9 held at the place of business of a producer and the

10 producer was actually conducting business relating to

11 producing a depiction of actual sexually explicit

12 conduct during hours other than 9:00 to 5:00, correct?

13 **A. I'm not aware of that.**

14 Q. Take a look at paragraph (c) of 75.5(c) in

15 Plaintiff's Exhibit 41.

16 **A. Okay. That's how it reads.**

17 Q. So that is correct?

18 **A. Yes.**

19 Q. And then it also provides that, if the

20 producer doesn't maintain at least 20 normal business

21 hours per week, the producer must provide notice to

22 the inspecting agency of the hours during which

23 records will be available for inspection which in no

24 case may be less than 20 hours per week, correct?

25 **A. That's correct.**

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(09:31-09:32)

1 Q. So, under this regulation, for someone who has

2 less than 20 normal business hours, the law required

3 that person to send some kind of a notice to whom?

4 The FBI? The Attorney General? Who would they send

5 that to?

6 **A. I don't know.**

7 Q. But they were required --

8 **A. They could they could send the notice to me.**

9 Q. Okay. But if they send it to no one, they

10 would be in violation, correct?

11 **MS. WYER: Objection. If you know.**

12 **A. According to the regulation, it says that the**

13 **producers must provide notice of the hours during**

14 **which records will be available.**

15 Q. (By Mr. Murray) Right. And if they fail to

16 do so knowingly, that would be a felony, wouldn't it?

17 **A. That would be in violation. Yes, sir.**

18 **MS. WYER: Objection.**

19 Q. (By Mr. Murray) And, so, once they give that

20 notice, the person must remain on the premises during

21 the 20 hours that notice was given, correct?

22 **MS. WYER: Objection.**

23 **A. I don't see that.**

24 Q. (By Mr. Murray) Well, let's put it this way.

25 The regulation requires the notice to identify the

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(09:32-09:34)

1 hours during which the records will be available for

2 inspection, correct?

3 **A. Yes.**

4 Q. And the person then must make sure that during

5 those hours the records would be available for

6 inspection, correct?

7 **MS. WYER: Objection. Calls for**

8 **inference.**

9 **A. According to the CFR 75, it does say that**

10 **producers must provide notice to the inspecting agency**

11 **of the hours during which records will be available**

12 **for inspection which in no case may be less than 20**

13 **hours per week.**

14 Q. (By Mr. Murray) Well, doesn't that make it

15 clear that they must make the records available during

16 the 20 hours that they've designated?

17 **MS. WYER: Objection. Clear to who?**

18 **A. I know how this was handled in practice. I**

19 **was only asked about it one time for somebody who**

20 **maintained records at their home.**

21 Q. (By Mr. Murray) Well, my question -- we'll

22 get to the practice --

23 **A. Okay.**

24 Q. -- when we get to the --

25 **A. Okay.**

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(09:34-09:35)

1 Q. -- to the 29 inspections. But my question is:

2 Is it not clear to you, as the person who was in

3 charge of this inspection program and carrying it out,

4 that the person who needs to send the notice of the 20

5 hours per week that the records will be available for

6 inspection has to tell the truth about which hours

7 they'll be available for inspection?

8 **MS. WYER: Objection.**

9 **A. Reading this, the way that I would interpret**

10 **it is that, yes, it does sound as if they need to be**

11 **available at least 20 hours per week.**

12 Q. (By Mr. Murray) Okay. Now, in terms of the

13 carrying out of the inspection, if you go to

14 75.5(c)(2), it indicates that when you arrive you are

15 to present your credentials, correct?

16 **A. Correct.**

17 Q. And to explain the nature and purpose of the

18 inspection, correct?

19 **A. Yes, sir.**

20 Q. And to indicate the scope of the specific

21 inspection and the records that you want to examine,

22 correct?

23 **A. Yes, sir.**

24 Q. And in paragraph (4) -- and (3) says you're

25 supposed to do the best you can to not unreasonably

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<p style="text-align: right;">Page 33</p> <p>(09:35-09:36)</p> <p>1 disrupt the operations of the place you're inspecting,</p> <p>2 correct?</p> <p>3 A. Yes, sir.</p> <p>4 Q. And then (4) says that, at the conclusion of</p> <p>5 the inspection, you may informally advise the person</p> <p>6 that you encountered of any apparent violations,</p> <p>7 correct?</p> <p>8 A. That's correct.</p> <p>9 Q. Under (d), you're permitted to inspect the</p> <p>10 records once during any four-month period but more</p> <p>11 often if you have a reasonable suspicion to believe</p> <p>12 that a violation has occurred, correct?</p> <p>13 A. That's correct.</p> <p>14 Q. You're permitted under (e) to make copies of</p> <p>15 any of the records that are maintained under 2257,</p> <p>16 correct?</p> <p>17 MS. WYER: Objection. Mischaracterizes</p> <p>18 the language.</p> <p>19 A. According to that paragraph, yes, we can copy</p> <p>20 the 2257 records that they have on-hand for those</p> <p>21 items that we had selected for inspection.</p> <p>22 Q. (By Mr. Murray) Okay. And you're in charge</p> <p>23 of which items you select, correct?</p> <p>24 A. Yes, sir. I was.</p> <p>25 Q. Now, then under (f) it says that the</p>	<p style="text-align: right;">Page 35</p> <p>(09:37-09:40)</p> <p>1 areas. We're very restricted into what we can look at</p> <p>2 and where we can look. It's all related to those</p> <p>3 records.</p> <p>4 Q. And who gave you these instructions?</p> <p>5 A. It would have been in a series of</p> <p>6 conversations with the U.S. Attorney's Office, with</p> <p>7 the FBI's Office of General Counsel.</p> <p>8 Q. I want to show you what has been marked as</p> <p>9 Plaintiff's Exhibit 34. And if you would show Ms.</p> <p>10 Wyer that because I don't have an extra copy.</p> <p>11 A. Okay.</p> <p>12 Q. I thought I did.</p> <p>13 MS. WYER: I need to have my own copies.</p> <p>14 MR. MURRAY: I'm sorry. I can't hear</p> <p>15 what you're saying.</p> <p>16 MS. WYER: If you're going to be</p> <p>17 referring to the text of this, I really need to have</p> <p>18 my own copy so I can --</p> <p>19 MR. MURRAY: Well, I don't really have</p> <p>20 the ability. These are documents that you provided</p> <p>21 us. You can see the mountain of materials that I've</p> <p>22 managed to bring to this. I sent you a letter</p> <p>23 explaining every subject matter that we were going to</p> <p>24 cover.</p> <p>25 MS. WYER: Well, you didn't tell me</p>
<p style="text-align: right;">Page 34</p> <p>(09:36-09:37)</p> <p>1 regulations do not restrict the otherwise lawful</p> <p>2 investigative prerogatives of an investigator while</p> <p>3 conducting an inspection, correct?</p> <p>4 MS. WYER: Objection.</p> <p>5 A. That's what it reads. Correct.</p> <p>6 Q. (By Mr. Murray) And then under (g) it</p> <p>7 indicates that, notwithstanding any provision of this</p> <p>8 part or any other regulation, a law enforcement</p> <p>9 officer may seize any evidence of the commission of</p> <p>10 any felony while conducting an inspection, correct?</p> <p>11 A. That's correct.</p> <p>12 Q. And, again, that would be without a warrant,</p> <p>13 correct?</p> <p>14 MS. WYER: Objection.</p> <p>15 A. If it's in plain view, yes. We can seize</p> <p>16 contraband in plain view. Yes, sir.</p> <p>17 Q. (By Mr. Murray) Well, this says "any evidence</p> <p>18 of the commission of any felony," correct, not just</p> <p>19 contraband, doesn't it?</p> <p>20 MS. WYER: Objection.</p> <p>21 A. The way that it was explained to us before we</p> <p>22 started inspections, it was all related to the plain</p> <p>23 view doctrine. So, if we walked in and you see a</p> <p>24 rocket launcher in the corner, yes, we can seize it.</p> <p>25 We don't have the ability to go and search other</p>	<p style="text-align: right;">Page 36</p> <p>(09:40-09:42)</p> <p>1 that --</p> <p>2 MR. MURRAY: So I presumed that you would</p> <p>3 have brought with you or have access to the documents</p> <p>4 that you provided.</p> <p>5 MS. WYER: You did not tell me that you</p> <p>6 were not going to provide copies of your exhibits to</p> <p>7 counsel. It's customary to provide copies to counsel</p> <p>8 of the exhibits.</p> <p>9 MR. MURRAY: Okay. Well, we have -- you</p> <p>10 provided us with some 6,000 pages of records</p> <p>11 pertaining to these inspections.</p> <p>12 MR. SAMONDS: Separate from those, we may</p> <p>13 have copies. I have brought some copies, but for all</p> <p>14 the documents which of the smaller copies.</p> <p>15 MR. MURRAY: Yeah. I thought I brought a</p> <p>16 copy for you, Kathy, of all these smaller ones, and</p> <p>17 this is the one that I can't seem to find.</p> <p>18 Q. (By Mr. Murray) Which number did I give you,</p> <p>19 Agent? 34?</p> <p>20 A. 34.</p> <p>21 MR. MURRAY: Why don't you use 35?</p> <p>22 They're identical. I was going to show him that at</p> <p>23 some point.</p> <p>24 Q. (By Mr. Murray) All right. So we were</p> <p>25 talking about Plaintiff's Exhibit 32?</p>

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<p style="text-align: right;">Page 37</p> <p>(09:42-09:43)</p> <p>1 A. 34.</p> <p>2 Q. 34? Okay.</p> <p>3 MR. SAMONDS: Do you have other small</p> <p>4 exhibits that you would like me to go get copies of?</p> <p>5 MR. MURRAY: Yes. Yeah. There's only --</p> <p>6 there were a total of four or five of these letters.</p> <p>7 So, if you want to --</p> <p>8 Q. (By Mr. Murray) All right. Plaintiff's</p> <p>9 Exhibit 34 is a letter that bears your signature, does</p> <p>10 it not?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Okay. And this one happens to be addressed to</p> <p>13 correct?</p> <p>14 A. That's correct.</p> <p>15 Q. And it's dated March 21, 2007?</p> <p>16 A. That's correct.</p> <p>17 Q. And that's an establishment where an</p> <p>18 inspection occurred, correct?</p> <p>19 A. That's correct.</p> <p>20 Q. And you participated in that inspection?</p> <p>21 A. Yes, I did.</p> <p>22 Q. And at the outset of that inspection, you</p> <p>23 presented the person that you encountered with a copy</p> <p>24 of this letter, correct?</p> <p>25 A. That's correct.</p>	<p style="text-align: right;">Page 39</p> <p>(09:44-09:46)</p> <p>1 violation of federal law to delay or obstruct the FBI</p> <p>2 from conducting the inspection," correct?</p> <p>3 A. That's correct.</p> <p>4 Q. And you give that notice to the person in this</p> <p>5 letter when you begin the inspection, correct?</p> <p>6 A. That's correct. Well, it was given prior to</p> <p>7 the inspection.</p> <p>8 Q. When you first show up?</p> <p>9 A. When we first arrived, yes, sir.</p> <p>10 Q. Okay.</p> <p>11 (Proceedings interrupted)</p> <p>12 Q. All right. So who did you report to when you</p> <p>13 were given the assignment to develop this program for</p> <p>14 2257? Who was your immediate supervisor?</p> <p>15 A. Allen Anovte.</p> <p>16 Q. And he was stationed in Washington?</p> <p>17 A. He was.</p> <p>18 Q. Okay. And did you keep him abreast of the</p> <p>19 developments in connection with establishing the</p> <p>20 program?</p> <p>21 A. Yes.</p> <p>22 Q. Now, who all was on the team besides yourself?</p> <p>23 A. Originally, it was me and four contract</p> <p>24 inspectors. All four are retired agents.</p> <p>25 Q. Now, tell me what you mean by a contract</p>
<p style="text-align: right;">Page 38</p> <p>(09:43-09:44)</p> <p>1 Q. And this letter advised the person that you</p> <p>2 were conducting an inspection under 2257, correct?</p> <p>3 A. That's correct.</p> <p>4 Q. It advised this person that section (c) of 18</p> <p>5 USC 2257 requires that you make such records available</p> <p>6 to the Attorney General or designee thereof for</p> <p>7 inspection at all reasonable times, correct?</p> <p>8 A. That's correct.</p> <p>9 Q. It advised him that violations of section 2257</p> <p>10 are subject to criminal penalties, correct?</p> <p>11 A. That's correct.</p> <p>12 Q. Two paragraphs below that you advised the</p> <p>13 person that, "Pursuant to these laws and regulations,</p> <p>14 the FBI is authorized to enter your place of business</p> <p>15 without delay," correct?</p> <p>16 A. That's correct.</p> <p>17 Q. And you advised this person, "It is a criminal</p> <p>18 violation of federal law to delay or obstruct the FBI</p> <p>19 from conducting the investigation," correct?</p> <p>20 A. That's not correct. It's from conducting the</p> <p>21 inspection.</p> <p>22 Q. I'm sorry. I misspoke.</p> <p>23 A. Okay.</p> <p>24 Q. Thank you.</p> <p>25 The sentence reads, "It is a criminal</p>	<p style="text-align: right;">Page 40</p> <p>(09:46-09:47)</p> <p>1 inspector.</p> <p>2 A. They were not employees of the FBI. They were</p> <p>3 independent contractors.</p> <p>4 Q. And how did you get them? Did you advertise?</p> <p>5 A. It was advertized.</p> <p>6 Q. Okay. And then what -- and were these all</p> <p>7 retired FBI agents?</p> <p>8 A. The four that were selected were all retired</p> <p>9 FBI agents. Correct.</p> <p>10 Q. But they were independent contractors rather</p> <p>11 than employees when they participated in this program?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Okay. And were they given any training?</p> <p>14 A. Yes, they were.</p> <p>15 Q. By whom?</p> <p>16 A. Several people. I know that we had somebody</p> <p>17 from OGC. I believe we had somebody from the U.S.</p> <p>18 Attorney's Office, an L.A. office. We had LAPD</p> <p>19 detectives that also provided some training, and I</p> <p>20 provided some of the training.</p> <p>21 Q. Okay. And who were the four contract</p> <p>22 inspectors? Do you remember?</p> <p>23 A. Yes.</p> <p>24 Q. And they're in the records if need be.</p> <p>25 A. e d</p>

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<p style="text-align: right;">Page 41</p> <p>(09:47-09:48)</p> <p>1 1</p> <p>2 Q. Now, besides yourself, were there any other</p> <p>3 FBI agents that participated in the program?</p> <p>4 A. Initially?</p> <p>5 Q. Later on.</p> <p>6 A. When you say "participate," in terms of</p> <p>7 conducting the actual inspections?</p> <p>8 Q. Yes.</p> <p>9 A. Later it was Steve Lawrence.</p> <p>10 Q. Okay. And I thought I saw -- and we'll show</p> <p>11 you, but I think --</p> <p>12 A. And later we did hire a fifth contractor.</p> <p>13 Q. Okay. And I thought I saw one other FBI agent</p> <p>14 on one of the inspection reports.</p> <p>15 A. Oh. e was part of the program</p> <p>16 initially.</p> <p>17 Q. What was his role in the program initially?</p> <p>18 A. The two of us were tasked with starting it up;</p> <p>19 and as I mentioned, he had other duties that he was</p> <p>20 responsible for. So he couldn't break away from his</p> <p>21 other duties. So I spent most of my time on the 2257.</p> <p>22 I think he did -- he may have gone to one, maybe two</p> <p>23 inspections.</p> <p>24 Then those positions were advertised, and I</p> <p>25 can't remember if chose not to apply or what the</p>	<p style="text-align: right;">Page 43</p> <p>(09:49-09:50)</p> <p>1 true that there was no search warrant associated with</p> <p>2 any of the 29 inspections, correct?</p> <p>3 A. That's true.</p> <p>4 Q. Okay. And except for a handful of what you</p> <p>5 called reinspections, they were all based on random</p> <p>6 selection process, correct?</p> <p>7 A. Yes, sir.</p> <p>8 Q. And, so, they weren't based on any probable</p> <p>9 cause to believe a violation --</p> <p>10 A. No.</p> <p>11 Q. -- had occurred? Okay. They weren't even</p> <p>12 based on a reasonable suspicion that a violation of</p> <p>13 this criminal statute would be found?</p> <p>14 A. That's correct. They all were randomly</p> <p>15 selected.</p> <p>16 Q. And all but a couple of them were done without</p> <p>17 advance notice, correct?</p> <p>18 A. That's correct.</p> <p>19 MS. WYER: Objection.</p> <p>20 Q. (By Mr. Murray) Now, how many of the 29 were</p> <p>21 you present for approximately?</p> <p>22 A. I'd have to look. More than half.</p> <p>23 Q. Okay. And as to the ones that you were not</p> <p>24 present at, were you briefed on them after they</p> <p>25 occurred?</p>
<p style="text-align: right;">Page 42</p> <p>(09:48-09:49)</p> <p>1 situation was, but Steve Lawrence was selected for the</p> <p>2 second position.</p> <p>3 Q. Okay. And I think you indicated that he might</p> <p>4 have come on-board about November?</p> <p>5 A. I can't remember if it was late 2007 or early</p> <p>6 2008. I think it was probably November, December of</p> <p>7 2006.</p> <p>8 Q. And the Government has provided us with</p> <p>9 reports of some 29 inspections, and I think you agreed</p> <p>10 that that sounds approximately the right number?</p> <p>11 A. Yes. Can I go back?</p> <p>12 Q. Sure.</p> <p>13 A. It wasn't. I think it was.</p> <p>14 I apologize.</p> <p>15 Q. Okay. So approximately 29 inspections were</p> <p>16 ultimately carried out under this program; is that</p> <p>17 correct?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And it is true that all 29 of them were done</p> <p>20 without a search warrant, correct?</p> <p>21 A. They were done as inspections and no search</p> <p>22 warrant was required. That's correct. No search</p> <p>23 warrant was used for any of those. Correct.</p> <p>24 Q. Okay. Well, my question wasn't whether one</p> <p>25 was required. I just want to make sure that it is</p>	<p style="text-align: right;">Page 44</p> <p>(09:50-09:51)</p> <p>1 A. No. I would have seen a report probably, but</p> <p>2 I was not given a briefing.</p> <p>3 Q. Okay. But you reviewed the report of the ones</p> <p>4 that you didn't do?</p> <p>5 MS. WYER: Objection.</p> <p>6 A. Not necessarily.</p> <p>7 Q. (By Mr. Murray) Some of the reports you</p> <p>8 reviewed?</p> <p>9 A. I may have seen some of the others reports.</p> <p>10 That wouldn't have fallen under my purview.</p> <p>11 Q. Okay. Now, I think there was one done in a</p> <p>12 storage area. Do you remember that?</p> <p>13 A. I don't.</p> <p>14 Q. Okay. In every case, with maybe one or two</p> <p>15 exceptions, your team, Government agents entered</p> <p>16 either a private residence or a private business</p> <p>17 premises to carry out the inspection, correct?</p> <p>18 MS. WYER: Objection. "Private" is</p> <p>19 undefined.</p> <p>20 A. To me, it's a public business. They were open</p> <p>21 for business. So my interpretation would be it's a</p> <p>22 public business.</p> <p>23 Q. (By Mr. Murray) But it was owned by private</p> <p>24 citizens, correct? This wasn't governmental -- these</p> <p>25 were not governmental entities that you were</p>

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(09:51-09:52)

1 searching, correct?

2 **A. That's correct.**

3 Q. Okay. So they were -- so, when I say "a

4 private business," I'm referring to the fact that they

5 were not a governmental entity, okay?

6 **A. Yes, sir.**

7 Q. Okay. And they were owned by citizens of the

8 United States or other persons, correct, private

9 persons?

10 **A. As far as I know, I don't know if it was a**

11 **corporation or an individual. I don't know.**

12 Q. Okay. So, in just about every case, just so

13 that we're clear, the Government agents entered either

14 a residence or a business premises to carry out the

15 inspections, correct?

16 **A. The places we entered was the places that were**

17 **listed on the 2257 as the location for the records.**

18 Q. And in every case --

19 **A. If that's a business -- or I think in two**

20 **instances it may have been a residence.**

21 Q. Okay. My question is a little bit more direct

22 than that.

23 **A. Okay.**

24 Q. I recognize that you looked at the label as to

25 where the records were kept in order to ascertain

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(09:52-09:54)

1 where to go, correct?

2 **A. Correct.**

3 Q. Okay. But in almost every case where you

4 ended up going -- the Government ended up going was

5 either a residence or a business premises to enter,

6 correct?

7 **A. Yes, sir.**

8 Q. Okay. Now, it is true that in almost every

9 case the Government agents entered areas of the

10 residence or the business premises that was not open

11 to the general public?

12 **MS. WYER: Objection.**

13 Q. (By Mr. Murray) Correct?

14 **MS. WYER: Objection. Lack of**

15 **foundation.**

16 **A. When you say "not open to the general public,"**

17 **could somebody from the general public walk through**

18 **those areas? A lot of the places we did in the**

19 **reception area or in a common area. There were some**

20 **that were done in a break room. So I'm sure the**

21 **public wouldn't be allowed to go back to their break**

22 **room.**

23 Q. (By Mr. Murray) Well, none of these were

24 retail operations where customers would come in and

25 buy merchandise, for example, correct?

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(09:54-09:55)

1 **MS. WYER: Objection. Lack of**

2 **foundation.**

3 **A. I don't believe so.**

4 Q. (By Mr. Murray) Okay. In other words, that's

5 correct? When you say you don't believe so, you're --

6 **A. I don't know if they also had retail**

7 **merchandise that was available. I'm trying to think**

8 **of the different inspections we did. I do know that**

9 **there were other people coming and going as we did the**

10 **inspections. If they sold products there or not, I**

11 **don't know.**

12 Q. In each of the inspections, private records

13 belonging to the producer were examined, correct?

14 **MS. WYER: Objection.**

15 **A. When you say "private records," these are the**

16 **records that are required by 2257. The only records**

17 **that we examined were the records, which I assume**

18 **makes them public, as required by 2257. Those are the**

19 **only records we looked at.**

20 Q. (By Mr. Murray) Yeah. But those records

21 belonged to the producers, didn't they? They were the

22 records of the producers you were --

23 **A. They were the records that the producers were**

24 **required to maintain by 2257.**

25 Q. Well, whose records were they?

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(09:55)

1 **A. In essence, the records that are being**

2 **required by the Government.**

3 Q. I know, but whose -- who created the records?

4 **A. Their producer --**

5 Q. Okay.

6 **A. -- created the records.**

7 Q. And, therefore, they owned the records, did

8 they not?

9 **MS. WYER: Objection.**

10 **A. Legally, I wouldn't know who would have**

11 **ownership of those records.**

12 Q. (By Mr. Murray) Well, they didn't belong to

13 you, did they?

14 **A. We're allowed to look at those and inspect**

15 **them.**

16 Q. Right.

17 **A. But we had no ownership. We're allowed to**

18 **copy them based on the statute.**

19 Q. Exactly. But they didn't belong to you, did

20 they?

21 **MS. WYER: Objection. Calls for legal**

22 **knowledge.**

23 **A. And I say I don't know legally who would have**

24 **ownership, who would have property rights.**

25 Q. (By Mr. Murray) You're telling me that you

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<p style="text-align: right;">Page 49</p> <p>(09:55-09:57)</p> <p>1 don't know whose records they -- whose records were 2 being examined, who owned those records? Is that your 3 testimony?</p> <p>4 A. If I have a tax record, does that tax record 5 belong to me? Does it belong to the IRS? I would say 6 the IRS has some claim to it. I don't know.</p> <p>7 Q. So, if you keep a copy of your tax return at 8 home, you don't think that that's something that 9 belongs to you, that copy?</p> <p>10 A. Yes. I have ownership of it, but also I 11 have -- the IRS also has some ownership of it also 12 because they require it.</p> <p>13 Q. But you've already submitted your tax return. 14 I'm talking about the copy that you maintain in your 15 home. You're saying that the IRS owns that copy?</p> <p>16 A. I'd have to ask a legal professor.</p> <p>17 Q. It is true, is it not, that in nearly every 18 case you entered premises that ordinarily, as an FBI 19 agent, absent exigent circumstances or voluntary 20 consent, you would need a search warrant to enter, 21 correct?</p> <p>22 A. No.</p> <p>23 Q. Do you need a search warrant to enter 24 someone's home to search for evidence?</p> <p>25 A. Not if they allow us in, they invite us in.</p>	<p style="text-align: right;">Page 51</p> <p>(09:58-09:59)</p> <p>1 you're searching for criminal activity or not, and 2 they say "I don't want you in my home," you can't 3 enter without a search warrant, can you?</p> <p>4 A. That's correct.</p> <p>5 Q. Okay. Regardless of what your reason for 6 being there is, correct?</p> <p>7 A. That's correct.</p> <p>8 Q. And it's also the case that in nearly every 9 situation you ordinarily, absent exigent circumstances 10 or voluntary consent, would have needed probable cause 11 to obtain a search warrant to enter areas not 12 accessible to the general public?</p> <p>13 MS. WYER: Objection. Calls for legal 14 knowledge.</p> <p>15 A. Could you rephrase that, please?</p> <p>16 Q. (By Mr. Murray) It is true that in nearly 17 every case involving these inspections you went -- to 18 the extent that you went into areas not accessible to 19 the general public, ordinarily, absent exigent 20 circumstances or voluntary consent, you would have 21 needed probable cause to obtain a search warrant to 22 enter those areas?</p> <p>23 A. I think we're almost talking apples and 24 oranges because, in the inspection process, that's not 25 required. If you're talking about suspicion of a</p>
<p style="text-align: right;">Page 50</p> <p>(09:57-09:58)</p> <p>1 Q. That's what I said. Listen very carefully to 2 my question.</p> <p>3 A. Okay.</p> <p>4 Q. In nearly every case, you entered premises 5 that ordinarily, absent exigent circumstances or 6 voluntary consent, you would need a search warrant to 7 enter?</p> <p>8 MS. WYER: Objection.</p> <p>9 A. For the businesses, we wouldn't need a search 10 warrant to go into a business. Any business that's 11 open to the public we have the ability to walk in.</p> <p>12 Q. (By Mr. Murray) Okay. Would you have the 13 ability without a search warrant to go into areas not 14 accessible to the public to search through records 15 without a search warrant and without consent and 16 without exigent circumstances?</p> <p>17 MS. WYER: Objection.</p> <p>18 A. Without consent? Unless they told us that, 19 no, you're not allowed to do that, then that would be 20 correct.</p> <p>21 Q. (By Mr. Murray) You'd need a search warrant, 22 correct, in that circumstance?</p> <p>23 A. If we were searching for criminal activity, 24 yes.</p> <p>25 Q. Well, if you arrive at someone's home, whether</p>	<p style="text-align: right;">Page 52</p> <p>(09:59-10:01)</p> <p>1 criminal activity and we're going to look for evidence 2 of that criminal activity, yes, we would need a 3 warrant and we need probable cause to obtain that 4 warrant.</p> <p>5 Q. Okay. I understand. 2257 and the 6 implementing regulations allows you to perform these 7 inspections without a warrant and without probable 8 cause. We've already agreed with that, correct?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Okay. What I'm asking is: Ordinarily, if it 11 weren't for 2257 and the implementing regulations, if 12 you wanted to enter residences or business premises 13 and areas within those residences and business 14 premises not accessible to the general public, you as 15 an FBI agent would need to obtain a warrant, correct?</p> <p>16 A. I'm not sure about the characterization of 17 that, and I'm looking at it from the actual happenings 18 of these inspections.</p> <p>19 If we went to a place of business to conduct 20 the inspection and they said, "We don't want you to," 21 it's not that we're going to continue on anyway. If 22 it were a search warrant, they don't have the ability 23 to say that. Well, they can't say that. We'll 24 continue with the search.</p> <p>25 With the inspection, if they said, "We're not</p>

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<p style="text-align: right;">Page 53</p> <p>(10:01-10:02)</p> <p>1 going to allow you in these areas," then that becomes</p> <p>2 a whole other issue that we have to then place calls</p> <p>3 back to DOJ.</p> <p>4 As we conduct the inspections, the places</p> <p>5 we're allowed to look at are where those records are</p> <p>6 stored. We don't have ability to wander around their</p> <p>7 business and look at whatever we want to look at. So</p> <p>8 the only places that we could look are very restricted</p> <p>9 by 2257, and the places that we could look are where</p> <p>10 the records are stored.</p> <p>11 Q. And what I'm saying is that, absent 2257 and</p> <p>12 the implementing regulation, ordinarily, unless you</p> <p>13 had exigent circumstances or voluntary consent, if you</p> <p>14 wanted to enter those areas, you'd have to get a</p> <p>15 search warrant?</p> <p>16 MS. WYER: Objection.</p> <p>17 Q. (By Mr. Murray) Isn't that true?</p> <p>18 MS. WYER: Objection. "Ordinarily" is</p> <p>19 undefined.</p> <p>20 A. We would need either their permission or a</p> <p>21 search warrant.</p> <p>22 Q. (By Mr. Murray) Okay. Thank you.</p> <p>23 Now, it is true, is it not, that in every case</p> <p>24 you examined records of IDs and names, those type of</p> <p>25 things, correct?</p>	<p style="text-align: right;">Page 55</p> <p>(10:03-10:04)</p> <p>1 looking for criminal activity, if you showed up at the</p> <p>2 door of a business premises and you said, "I'd like to</p> <p>3 look at records that you have of all the performers</p> <p>4 that you've used in your films," whether you were</p> <p>5 looking at it for civil, criminal, or any other</p> <p>6 purpose, and they said "no," ordinarily you would have</p> <p>7 to go get a search warrant before you could enter the</p> <p>8 premises to examine those records, correct?</p> <p>9 A. Well, as an FBI agent, I wouldn't be there</p> <p>10 unless it's part of an investigation or, in this case,</p> <p>11 as an inspection. So, yes. If I'm there as an FBI</p> <p>12 agent in official capacity, if I want to look at --</p> <p>13 and it's not within the 2257 inspection, if it's</p> <p>14 another FBI agent conducting a criminal investigation</p> <p>15 and he wants to look at whatever records they may</p> <p>16 have, yes, it will require a warrant.</p> <p>17 Q. Okay. Let me make sure I understand what</p> <p>18 you're saying.</p> <p>19 We recognize, then, we have already agreed</p> <p>20 upon the fact that 2257 and the implementing</p> <p>21 regulation allows you to examine those records without</p> <p>22 a warrant and without probable cause, correct?</p> <p>23 MS. WYER: Objection.</p> <p>24 A. Yes.</p> <p>25 Q. (By Mr. Murray) Okay. What I'm saying and</p>
<p style="text-align: right;">Page 54</p> <p>(10:02-10:03)</p> <p>1 A. The records required under 2257.</p> <p>2 Q. And those include IDs. They include a record</p> <p>3 of nicknames and aliases. And it includes dates of</p> <p>4 birth and dates of production of the film, if it's a</p> <p>5 film, those type of records, correct?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Okay. And oftentimes they were stored in file</p> <p>8 cabinets, correct?</p> <p>9 A. That's correct.</p> <p>10 Q. Sometimes they were on computers?</p> <p>11 A. I believe so.</p> <p>12 Q. But in every case you examined those type of</p> <p>13 records if they were available, correct?</p> <p>14 A. The 2257 records? Correct.</p> <p>15 Q. And it is true that ordinarily, if it weren't</p> <p>16 for 2257 and its implementing regulation, absent</p> <p>17 exigent circumstances or voluntary consent, you would</p> <p>18 need a search warrant to search through records like</p> <p>19 that; isn't that true?</p> <p>20 MS. WYER: Objection.</p> <p>21 A. If I were an FBI agent conducting a criminal</p> <p>22 investigation, I would need a search warrant to look</p> <p>23 for those records if they were evidence of that</p> <p>24 criminal activity.</p> <p>25 Q. (By Mr. Murray) Well, even if you weren't</p>	<p style="text-align: right;">Page 56</p> <p>(10:04-10:06)</p> <p>1 asking you: Whether you agree or not, if it weren't</p> <p>2 for 2257 and the implementing regulation that</p> <p>3 authorized you to do that without a warrant, you would</p> <p>4 have to have a warrant to do it, correct?</p> <p>5 MS. WYER: Objection.</p> <p>6 A. The part of the question that's confusing to</p> <p>7 me, as I'm looking at it in an official capacity as an</p> <p>8 FBI agent, the only reason I would want to look at</p> <p>9 information is as evidence of criminal activity. In</p> <p>10 order to do that, I would need a warrant.</p> <p>11 Q. (By Mr. Murray) Okay. And probable cause,</p> <p>12 too, in that scenario?</p> <p>13 A. You can get the warrant without probable</p> <p>14 cause.</p> <p>15 Q. All right. So, if I understand the program</p> <p>16 that you developed, you tried to develop a program</p> <p>17 that would be efficient, correct, and useful?</p> <p>18 A. We tried to develop a program that was well</p> <p>19 within the law and that fulfilled the mission.</p> <p>20 Q. And you randomly selected the producers whose</p> <p>21 establishments you would enter to inspect, correct?</p> <p>22 A. Yes, sir.</p> <p>23 Q. By some computer program that just spit out at</p> <p>24 random the names of producers that you knew about were</p> <p>25 in -- were dealing in sexually explicit materials,</p>

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<p style="text-align: right;">Page 57</p> <p>(10:06-10:07)</p> <p>1 correct?</p> <p>2 A. We used a random number generator.</p> <p>3 Q. Okay. And from that point, your contract</p> <p>4 agents would attempt to obtain a sample of the</p> <p>5 sexually explicit images that that producer had</p> <p>6 created?</p> <p>7 A. No, sir.</p> <p>8 Q. Didn't they try to order merchandise?</p> <p>9 A. No. That would be my job.</p> <p>10 Q. Oh, okay. So you were the one that obtained a</p> <p>11 sample of the sexually explicit materials that were at</p> <p>12 issue?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Okay. But your contract employees then</p> <p>15 examined the images to determine whether they came</p> <p>16 within 2257 and other information?</p> <p>17 A. Correct.</p> <p>18 Q. And they identified performers and titles, for</p> <p>19 example, the records of which you wanted to inspect?</p> <p>20 A. Yes, sir.</p> <p>21 Q. And then you would go out to do the</p> <p>22 inspections, correct?</p> <p>23 A. That's correct.</p> <p>24 Q. And how many people would be on the inspection</p> <p>25 team generally speaking?</p>	<p style="text-align: right;">Page 59</p> <p>(10:08-10:10)</p> <p>1 A. That's correct.</p> <p>2 Q. And then various reports would be completed</p> <p>3 with respect to each inspection, correct?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Then let's take a look at some of these</p> <p>6 reports.</p> <p>7 A. Do you want me to continue to hold onto these?</p> <p>8 Q. Yeah. You can just set them right there.</p> <p>9 A. Okay.</p> <p>10 Q. Keep them right in front of you.</p> <p>11 I want to show you what's been marked as</p> <p>12 Plaintiff's Exhibit 1.</p> <p>13 MS. WYER: Could you identify which</p> <p>14 report you're looking at?</p> <p>15 MR. MURRAY: I'm about to. Yes.</p> <p>16 Q. (By Mr. Murray) This, Agent, is it not, the</p> <p>17 report of an inspection of something called ?</p> <p>18 A. Yes, sir.</p> <p>19 Q. , I guess, is the name; is that</p> <p>20 correct?</p> <p>21 A. That's what's listed on here. Correct.</p> <p>22 MS. WYER: Could you wait until we find</p> <p>23 the report?</p> <p>24 MR. MURRAY: Sure. So you do have them?</p> <p>25 MS. WYER: He told you earlier that he</p>
<p style="text-align: right;">Page 58</p> <p>(10:07-10:08)</p> <p>1 A. It would typically -- for the ones that I</p> <p>2 conducted, it would be me and the four contractors.</p> <p>3 Q. So there was a team of five?</p> <p>4 A. Yes. And then later, once we hired the fifth</p> <p>5 contractor, there could be six.</p> <p>6 Q. Okay. And when Agent Lawrence did an</p> <p>7 inspection, was that generally what he would do as</p> <p>8 well?</p> <p>9 A. Yes. And I think originally, when he first</p> <p>10 was coming on, he would go, too, so he could learn the</p> <p>11 process. And I can't remember if , had been</p> <p>12 hired at that point or not. So there may have been</p> <p>13 seven. So, five, six, seven typically was the number</p> <p>14 that we would take.</p> <p>15 Q. So Agent Lawrence would go with you for the</p> <p>16 first few once he came on-board?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Okay. And then he would do some on his own --</p> <p>19 I mean, without you?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Okay. But he would have the similar team of</p> <p>22 contract agents, correct?</p> <p>23 A. He had the same members.</p> <p>24 Q. So each inspection would involve anywhere from</p> <p>25 five to seven Government personnel, correct?</p>	<p style="text-align: right;">Page 60</p> <p>(10:10-10:11)</p> <p>1 had them.</p> <p>2 MR. MURRAY: Well, I didn't hear that.</p> <p>3 Well, then why were you complaining that I didn't</p> <p>4 bring an extra copy?</p> <p>5 MS. WYER: I did not bring them.</p> <p>6 MR. SAMONDS: And, also, we didn't have</p> <p>7 copies of all the other documents which you've been</p> <p>8 going through and sorting through.</p> <p>9 MR. MURRAY: But I provided you with</p> <p>10 copies with the one exception that you were able to</p> <p>11 make a copy of, that letter.</p> <p>12 MR. SAMONDS: There are some which she</p> <p>13 specifically asked for a copy for, and we had no idea</p> <p>14 how many more documents there would be that you</p> <p>15 wouldn't have copies of.</p> <p>16 MR. MURRAY: Well, you know, you've got</p> <p>17 the reports?</p> <p>18 MR. SAMONDS: I think I have all of them.</p> <p>19 I would just like to see.</p> <p>20 MR. MURRAY: I thought you didn't want to</p> <p>21 to have to carry -- you told me when we were coming in</p> <p>22 the last thing you wanted was to have to go home with</p> <p>23 6,000 pages of the records that you provided us.</p> <p>24 MS. WYER: Well, I don't want to carry it</p> <p>25 all, but I did not know and I was not informed that</p>

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<p style="text-align: right;">Page 61</p> <p>(10:11)</p> <p>1 you were going to enter all of these as exhibits at</p> <p>2 this deposition.</p> <p>3 MR. MURRAY: Well, I wasn't required to</p> <p>4 inform you of that. I know of no rule that requires</p> <p>5 me to tell you what I'm going to ask in a deposition.</p> <p>6 MS. WYER: That's fine.</p> <p>7 MR. MURRAY: I know of no rule that</p> <p>8 required me to make 6,000 pages of documents and lug</p> <p>9 them from Cleveland to Houston so that you could have</p> <p>10 a set of copies of the 29 reports that you sent me.</p> <p>11 MS. WYER: I believe it's customary at a</p> <p>12 deposition for the counsel to provide opposing counsel</p> <p>13 with a copy of any exhibits.</p> <p>14 MR. MURRAY: Not when there are 6,000</p> <p>15 pages that you provided me and that you have.</p> <p>16 MS. WYER: I have not experienced that</p> <p>17 exception.</p> <p>18 MR. MURRAY: Okay. Well, I know of no</p> <p>19 rule that required me to do that, but you can look on</p> <p>20 with the agent. He's got the document right with you.</p> <p>21 MS. WYER: He's attempting to find that</p> <p>22 document.</p> <p>23 MR. MURRAY: I'm talking about the</p> <p>24 witness.</p> <p>25 MR. SAMONDS: I don't appear to have The</p>	<p style="text-align: right;">Page 63</p> <p>(10:12-10:19)</p> <p>1 vast majority of them.</p> <p>2 MR. MURRAY: Why don't we take a short</p> <p>3 break?</p> <p>4 (Brief recess)</p> <p>5 Q. (By Mr. Murray) All right. Agent Joyner,</p> <p>6 Plaintiff's Exhibit 1 is in front of you; is that</p> <p>7 correct, sir?</p> <p>8 A. That's correct.</p> <p>9 Q. And Plaintiff's Exhibit 1 is a set of records</p> <p>10 pertaining to one of the search -- one of the</p> <p>11 inspections that was carried out under 2257; isn't</p> <p>12 that correct?</p> <p>13 A. This is one of the inspections. Correct.</p> <p>14 Q. And are you familiar with this packet of --</p> <p>15 this type of package of documents?</p> <p>16 A. Yes, I am.</p> <p>17 Q. And so that --</p> <p>18 MS. WYER: Take a minute. Have you had a</p> <p>19 chance to look at it?</p> <p>20 A. Yes.</p> <p>21 Q. (By Mr. Murray) Okay. And is this the type</p> <p>22 of record that your program called for creating in</p> <p>23 connection with an inspection?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And if you turn to -- well, let me ask</p>
<p style="text-align: right;">Page 62</p> <p>(10:12)</p> <p>1 Agency. I think I have almost all of the others. I'm</p> <p>2 not sure why that one would not be here. It wasn't in</p> <p>3 the supplement, was it? I'm not sure why I don't have</p> <p>4 that one.</p> <p>5 Q. (By Mr. Murray) All right. Agent Joyner, you</p> <p>6 have in front of you Plaintiff's Exhibit 1, do you</p> <p>7 not?</p> <p>8 MS. WYER: For the record, let the record</p> <p>9 reflect that counsel for the witness has not been</p> <p>10 provided a copy of this exhibit.</p> <p>11 MR. MURRAY: And let the record show that</p> <p>12 you're welcome to examine the -- here. Let me have</p> <p>13 that.</p> <p>14 MR. SAMONDS: Would you let me go make a</p> <p>15 copy?</p> <p>16 MR. MURRAY: Let me have that exhibit</p> <p>17 back.</p> <p>18 Ms. Wyer, here is Plaintiff's Exhibit 1.</p> <p>19 Please take a look at it before I show it to the</p> <p>20 witness.</p> <p>21 MR. SAMONDS: Would you like me to go</p> <p>22 make a copy of it?</p> <p>23 MR. MURRAY: That's up to you. I don't</p> <p>24 care. You're going to have to do it for 6,000 pages.</p> <p>25 MR. SAMONDS: No. I think I have the</p>	<p style="text-align: right;">Page 64</p> <p>(10:19-10:20)</p> <p>1 you this: Does that include this cover page or was</p> <p>2 that something that's added for purposes of the case?</p> <p>3 A. That was something that was added.</p> <p>4 Q. Okay. As was page 2 was added, correct?</p> <p>5 A. Correct.</p> <p>6 Q. And there's nothing on page 3. It's blank.</p> <p>7 Where does the record begin that consists of the</p> <p>8 record that was created in connection with this</p> <p>9 inspection?</p> <p>10 A. Page 4.</p> <p>11 Q. Okay. And then does it go all the way to page</p> <p>12 84?</p> <p>13 A. That's correct.</p> <p>14 Q. So, from pages 4 through 84, that constitutes</p> <p>15 the record pertaining to the inspection that occurred</p> <p>16 with respect to this particular establishment,</p> <p>17 correct?</p> <p>18 A. That's correct.</p> <p>19 Q. And it consists of a number of items. There's</p> <p>20 a Table of Contents, correct?</p> <p>21 A. Yes.</p> <p>22 Q. And the Table of Contents then identifies</p> <p>23 various tabs, correct?</p> <p>24 A. That's correct.</p> <p>25 Q. And was this the type of template that you</p>

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<p style="text-align: right;">Page 65</p> <p>(10:20-10:21)</p> <p>1 created?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Okay. And it was followed in every case?</p> <p>4 A. I believe this same format was used for all</p> <p>5 the inspections.</p> <p>6 Q. Very good. Now, if you turn to page 7 of</p> <p>7 Plaintiff's Exhibit 1, there is a document entitled</p> <p>8 Regulatory Inspections Report, correct?</p> <p>9 A. That's correct.</p> <p>10 Q. And this is a report of Supervisory Special</p> <p>11 Agent Charles R. Joyner, which is yourself, correct?</p> <p>12 A. That's correct.</p> <p>13 Q. And the date of the report is August 24, 2007;</p> <p>14 is that correct?</p> <p>15 A. That's correct.</p> <p>16 Q. And this is the report that you created in</p> <p>17 connection with the inspection of The Agency, correct?</p> <p>18 A. That's correct.</p> <p>19 Q. And that inspection occurred on August 20,</p> <p>20 2007, correct?</p> <p>21 A. That's correct.</p> <p>22 Q. Now, you indicate in the summary the DVDs had</p> <p>23 been ordered from the internet, correct?</p> <p>24 A. Yes.</p> <p>25 Q. And then the contract inspectors reviewed them</p>	<p style="text-align: right;">Page 67</p> <p>(10:22-10:23)</p> <p>1 they couldn't also tell us who the true name was or</p> <p>2 the aliases. So there was not an adequate</p> <p>3 cross-reference system in place.</p> <p>4 Q. What do you mean by a Y-Tracker program?</p> <p>5 A. That was the name they gave us of the system</p> <p>6 that they installed that they had purchased.</p> <p>7 Q. I see. And under the regs, there has to be</p> <p>8 the ability to retrieve not only the true name but the</p> <p>9 alias or nickname or stage name, correct?</p> <p>10 A. That's correct.</p> <p>11 Q. And, so, that's why you cited that regulation</p> <p>12 75.3 as being the regulation that would be violated by</p> <p>13 their failure to be able to cross-reference the true</p> <p>14 name and the stage name; is that correct?</p> <p>15 A. That's correct.</p> <p>16 Q. It doesn't mean they didn't have a record of</p> <p>17 the performer. It just means you couldn't</p> <p>18 cross-reference it, correct?</p> <p>19 A. That's correct.</p> <p>20 Q. And even if they have the name of the</p> <p>21 performer and they have the ID, if you can't</p> <p>22 cross-reference it, you violated the law, didn't you?</p> <p>23 MS. WYER: Objection.</p> <p>24 A. That is a requirement of 2257. You have to</p> <p>25 have the ability to cross-reference.</p>
<p style="text-align: right;">Page 66</p> <p>(10:21-10:22)</p> <p>1 and identified the various performers that you would</p> <p>2 be interested in, correct?</p> <p>3 MS. WYER: Objection.</p> <p>4 A. They identified all the performers that were</p> <p>5 engaged in a sexually explicit act.</p> <p>6 Q. (By Mr. Murray) Right. And you wanted --</p> <p>7 ultimately, your mission was to inspect records</p> <p>8 pertaining to those performers, correct?</p> <p>9 A. That's correct.</p> <p>10 Q. Now, you indicate that there was one 2257</p> <p>11 violation that was found after the inspection,</p> <p>12 correct, if you go back to page 7?</p> <p>13 A. That's correct.</p> <p>14 Q. Okay. And then on page 8 you have a finding;</p> <p>15 is that correct?</p> <p>16 A. That's correct.</p> <p>17 Q. And you write, "A 'Y-Tracker' program was</p> <p>18 installed as the cross-reference system, but the stage</p> <p>19 names could not be determined from the true names of</p> <p>20 the performers"; is that correct?</p> <p>21 A. That's correct.</p> <p>22 Q. What do you mean by that?</p> <p>23 A. The system that they had installed, they</p> <p>24 couldn't pull up -- we'd have a stage name of this</p> <p>25 performer, performer A, and with that performer A,</p>	<p style="text-align: right;">Page 68</p> <p>(10:23-10:24)</p> <p>1 Q. (By Mr. Murray) And it's a criminal offense</p> <p>2 if you don't, isn't it?</p> <p>3 MS. WYER: Objection.</p> <p>4 A. It's a violation of 2257. Correct.</p> <p>5 Q. (By Mr. Murray) Which is a criminal offense,</p> <p>6 correct?</p> <p>7 MS. WYER: Objection.</p> <p>8 A. That's correct.</p> <p>9 Q. (By Mr. Murray) Okay. Then if you look at</p> <p>10 page 9, you have a section entitled "Pre-inspection</p> <p>11 Procedures"; is that correct?</p> <p>12 A. Yes, sir.</p> <p>13 Q. And you outline the four steps that were taken</p> <p>14 before the inspection was carried out, correct?</p> <p>15 A. That's correct.</p> <p>16 Q. Again, there's a random selection of this</p> <p>17 particular producer, correct?</p> <p>18 A. That's correct.</p> <p>19 Q. A sample of the producer's DVDs was ordered,</p> <p>20 correct?</p> <p>21 A. That's correct.</p> <p>22 Q. The DVDs were reviewed for 18 USC 2257</p> <p>23 compliance, correct?</p> <p>24 A. Correct.</p> <p>25 Q. And your contractors then fill out a</p>

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(10:24-10:25)

1 pre-inspection analysis for each DVD; is that correct?

2 **A. That's correct.**

3 Q. And then all the performers were identified by

4 either a stage name or by still photographs of their

5 likeness taken from the video, correct?

6 **A. That's correct.**

7 Q. Okay. So you then go out to the premises on

8 August -- I think we said 17th, two thousand and --

9 **A. August 20th.**

10 Q. -- August 20th in 2007 and you arrived there

11 at about 9:30 a.m. in the morning, correct?

12 **A. Yes, sir.**

13 Q. And you were the lead inspector. So, you

14 identified yourself and the purpose of the inspection

15 upon entering the premises, correct?

16 **A. Yes, sir.**

17 Q. And you explained the nature and purpose of

18 the inspection, correct?

19 **A. Correct.**

20 Q. And then you provided _____ who was

21 the person that you encountered at this inspection,

22 with a letter explaining the parameters of the

23 inspection and advising _____ could be

24 reinspected at any time if violations were discovered,

25 correct?

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(10:25-10:26)

1 **A. Yes, sir.**

2 Q. And that's similar to the letter that you

3 previously identified as Plaintiff's Exhibit 32?

4 **A. Plaintiff's Exhibit 34.**

5 Q. 34?

6 **A. Yes, sir.**

7 Q. It was that type of letter you're referring

8 to?

9 **A. Yes, sir.**

10 Q. Okay. Do you know why you weren't able to

11 retrieve or do you know where all these other letters

12 are? We've gotten four or five of them. Do you know

13 where the others would be?

14 **A. I don't know.**

15 Q. Okay. Now, before you began the inspection,

16 you had photographs taken of the business location of

17 where the records were stored, correct?

18 **A. That's correct.**

19 Q. And you had photographs taken of the working

20 area assigned to the inspectors, correct?

21 **A. That's correct.**

22 Q. And then a disc containing the six photographs

23 was placed in an envelope and maintained with the case

24 file; is that correct?

25 **A. That's correct.**

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(10:26-10:27)

1 Q. Do you have any idea why the -- have you

2 looked at some of these records in preparation for

3 your deposition?

4 **A. I have not.**

5 Q. Do you know where the originals of these --

6 obviously, you don't know where they would be at this

7 juncture, do you?

8 **A. No, sir.**

9 Q. Okay. What was the quality of the photos at

10 the time they were taken?

11 **A. Typical digital photos.**

12 **MR. MURRAY:** Have you produced those or

13 just copies?

14 **MR. SAMONDS:** Just the copies have been

15 produced.

16 **MR. MURRAY:** Because most of them are

17 very, very poor. Are the originals available to see?

18 **MS. WYER:** We produced a second set of

19 the photos, I believe.

20 **MR. MURRAY:** Well, the --

21 **MR. SAMONDS:** They're some of the photos.

22 **MR. MURRAY:** Go ahead.

23 **MR. SAMONDS:** I believe copies of all of

24 the photos have been produced. To the extent you need

25 better copies, we can work on trying to get you better

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(10:27-10:28)

1 copies.

2 **MR. MURRAY:** Well, are there originals

3 some place that would be the best?

4 **MR. SAMONDS:** Within the case file, yes.

5 **MR. MURRAY:** Okay. Because I think

6 ultimately we need those because most of these -- and

7 you've tried your best because we did get some

8 supplemental pictures and they really weren't much

9 better.

10 **MR. SAMONDS:** We can certainly work on

11 getting you better copies if those are necessary.

12 **MR. MURRAY:** That would be great or

13 access to the originals or maybe we'll just have to

14 have the originals --

15 **MS. WYER:** We can discuss this.

16 **MR. MURRAY:** -- brought to court.

17 Q. (By Mr. Murray) Okay. So you took

18 photographs before. Then you inspected the records

19 maintained by _____ correct?

20 **A. For those six videos that were selected, yes,**

21 **sir.**

22 Q. Okay. And that took about -- the inspection

23 took about three hours because you say it concluded at

24 approximately 12:30?

25 **A. Yes, sir.**

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<p style="text-align: right;">Page 73</p> <p>(10:28-10:30)</p> <p>1 Q. And then you say that a photograph was taken</p> <p>2 of the room where you did the inspection, correct?</p> <p>3 A. That's correct.</p> <p>4 Q. You then have something called Records</p> <p>5 Verification Spreadsheet, correct?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Okay. You then have the 302s that the</p> <p>8 contract inspectors created, correct?</p> <p>9 A. That's correct.</p> <p>10 Q. And your name is on some of them as well. And</p> <p>11 those have to do with reviewing the DVDs, correct?</p> <p>12 A. Yes, sir.</p> <p>13 Q. You then have the photographs if you look at</p> <p>14 page 27. Well, I'm sorry go to page 25. You have a</p> <p>15 photo log first of all, correct?</p> <p>16 A. Yes, sir.</p> <p>17 Q. In which your photographer who in this case</p> <p>18 was who? Does it indicate who took these photos?</p> <p>19 A. I ...</p> <p>20 Q. Okay. And there's a total of six and they're</p> <p>21 described, correct?</p> <p>22 A. That's correct.</p> <p>23 Q. And then if you look at page 28, you can see</p> <p>24 that that is the front door of the building that you</p> <p>25 entered; is that correct?</p>	<p style="text-align: right;">Page 75</p> <p>(10:31-10:32)</p> <p>1 A. That's showing the location where they have</p> <p>2 the records stored.</p> <p>3 Q. And are the records inside those file</p> <p>4 cabinets?</p> <p>5 A. Yes, sir.</p> <p>6 Q. Well, did you examine any of the records that</p> <p>7 were inside those file cabinets?</p> <p>8 A. Of the six that were selected for the</p> <p>9 inspection, yes, sir.</p> <p>10 Q. Okay. And they had to be removed from those</p> <p>11 file cabinets to look at them?</p> <p>12 A. They did.</p> <p>13 Q. Now, correct me if I'm wrong, but isn't it</p> <p>14 true, Agent Joyner, that ordinarily if an FBI agent</p> <p>15 wants to peruse a file cabinet like this and look at</p> <p>16 the records that are contained inside that are located</p> <p>17 on a premises of a business, absent exigent</p> <p>18 circumstances and voluntary consent or voluntary</p> <p>19 consent, an FBI agent would ordinarily need a search</p> <p>20 warrant, correct?</p> <p>21 A. For each of these inspections, we gave the</p> <p>22 owner or the custodian of records the option. They</p> <p>23 could either have us pull the records or they could</p> <p>24 pull them and bring them to us. So it was up to them.</p> <p>25 We asked them what they preferred.</p>
<p style="text-align: right;">Page 74</p> <p>(10:30-10:31)</p> <p>1 A. Yes, sir.</p> <p>2 Q. And if you look at page 29, you can see that</p> <p>3 there's a picture of various file cabinets, correct?</p> <p>4 A. Yes, sir.</p> <p>5 Q. And the drawers to those file cabinets are</p> <p>6 open; isn't that correct?</p> <p>7 A. That's correct.</p> <p>8 Q. And whose file cabinets were those?</p> <p>9 A. That was the --</p> <p>10 MS. WYER: Objection.</p> <p>11 A. That was the location that The Agency stored</p> <p>12 their 2257 records.</p> <p>13 Q. (By Mr. Murray) But those file cabinets</p> <p>14 belonged to the proprietor, not to the Government,</p> <p>15 correct?</p> <p>16 A. That's correct.</p> <p>17 Q. And did you search through the records</p> <p>18 contained in the -- in those file cabinets as depicted</p> <p>19 on this photograph?</p> <p>20 A. No, sir.</p> <p>21 Q. Did you inspect any of those records?</p> <p>22 A. We inspected the records that were on the list</p> <p>23 of the six DVDs.</p> <p>24 Q. Well, then what are these -- what is this</p> <p>25 picture of?</p>	<p style="text-align: right;">Page 76</p> <p>(10:32-10:33)</p> <p>1 Q. That's not my question. My question is</p> <p>2 different.</p> <p>3 It is true, is it not, that ordinarily, in the</p> <p>4 absence of exigent circumstances or voluntary consent,</p> <p>5 an FBI agent who wants to peruse through the records</p> <p>6 contained in a file cabinet like this located on a</p> <p>7 business premises would need a search warrant?</p> <p>8 MS. WYER: Objection, form.</p> <p>9 A. Ordinarily during a 2256 inspection, the</p> <p>10 answer would be no.</p> <p>11 Q. (By Mr. Murray) Okay. Absent 2257 --</p> <p>12 A. Uh-huh.</p> <p>13 Q. -- and the implementing regulations which</p> <p>14 permit you to do it without a warrant, without</p> <p>15 probable cause, without advance notice, if 2257 and</p> <p>16 its implementing regulations didn't authorize what you</p> <p>17 did here, ordinarily an FBI agent would need a search</p> <p>18 warrant to look through this file cabinet on this</p> <p>19 business premises and the records contained in there;</p> <p>20 isn't that true?</p> <p>21 MS. WYER: Objection.</p> <p>22 A. If an agent absent 2257 inspections?</p> <p>23 Q. (By Mr. Murray) Yes.</p> <p>24 A. If an agent were at that premise to conduct a</p> <p>25 criminal investigation to look at the records, he</p>

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<p style="text-align: right;">Page 77</p> <p>(10:33-10:34)</p> <p>1 would need a warrant, which is completely separate</p> <p>2 than a 2257 inspection.</p> <p>3 Q. I understand that.</p> <p>4 A. Okay. Yes.</p> <p>5 Q. But that's my point.</p> <p>6 A. Yes.</p> <p>7 Q. I'm trying to divorce it from the 2257</p> <p>8 inspection because we can agree you don't need a</p> <p>9 warrant under this statute, you don't need probable</p> <p>10 cause, and you don't have to give them advance</p> <p>11 warning. We've already agreed on that three times,</p> <p>12 haven't we?</p> <p>13 A. For any criminal investigation to look at the</p> <p>14 records without consent or exigent circumstances, yes,</p> <p>15 you would require a warrant.</p> <p>16 Q. Well, actually, for any investigation, if you</p> <p>17 just showed up and for whatever official reason you</p> <p>18 might have, if they wouldn't consent to you perusing</p> <p>19 through that file cabinet, you would need a search</p> <p>20 warrant, correct?</p> <p>21 A. Well, the FBI wouldn't be there unless it was</p> <p>22 a criminal investigation other than 2257 inspections.</p> <p>23 Q. Okay. I think we're saying the same things.</p> <p>24 You would need a search warrant if you were there in</p> <p>25 an official capacity wanting to look through those</p>	<p style="text-align: right;">Page 79</p> <p>(10:35-10:36)</p> <p>1 inspection.</p> <p>2 Q. Okay.</p> <p>3 A. We always asked them where they would like us</p> <p>4 to do the paperwork, and that's the area that they</p> <p>5 selected.</p> <p>6 Q. Okay. And when you entered this building --</p> <p>7 do you remember this particular inspection?</p> <p>8 A. No.</p> <p>9 Q. Okay. So you can't really describe what you</p> <p>10 saw when you entered?</p> <p>11 A. No.</p> <p>12 Q. Okay. Anyway, this picture depicts the area</p> <p>13 that you did enter for purposes of examining records,</p> <p>14 correct?</p> <p>15 A. Yes, sir.</p> <p>16 Q. And there were a total of five or six of you</p> <p>17 in this area examining these records, correct?</p> <p>18 A. That's correct.</p> <p>19 Q. And the next page shows essentially the same</p> <p>20 office area, correct?</p> <p>21 A. Yes, sir.</p> <p>22 Q. And, again, if it weren't for 2257 and its</p> <p>23 implementing regulations, if an FBI agent had an</p> <p>24 official reason to be at that premises wanting to</p> <p>25 enter that area of those premises without consent by</p>
<p style="text-align: right;">Page 78</p> <p>(10:34-10:35)</p> <p>1 records if you didn't have the authority of 2257.</p> <p>2 MS. WYER: Objection.</p> <p>3 Q. (By Mr. Murray) Do we agree on that?</p> <p>4 MS. WYER: Objection.</p> <p>5 A. Yes, sir.</p> <p>6 Q. (By Mr. Murray) Okay. Now, the next page</p> <p>7 shows an office type area, correct, or some -- tell me</p> <p>8 what that shows, what that picture depicts.</p> <p>9 A. I don't know. The quality is poor. It looks</p> <p>10 like a work area.</p> <p>11 Q. Right. It looks like a work area. There's a</p> <p>12 chair in the middle, isn't there?</p> <p>13 A. Yes, sir.</p> <p>14 Q. There's a desk; isn't that true?</p> <p>15 A. That looks like a desk.</p> <p>16 Q. There's papers on that desk?</p> <p>17 A. Yes, sir.</p> <p>18 Q. There's a file cabinet to the right, correct?</p> <p>19 A. Yes, sir.</p> <p>20 Q. There looks like a printer or some kind of</p> <p>21 maybe a fax machine on the left of that desk; is that</p> <p>22 correct?</p> <p>23 A. That's what it looks like.</p> <p>24 Q. And that was an area that you entered?</p> <p>25 A. That was an area where they gave us to do the</p>	<p style="text-align: right;">Page 80</p> <p>(10:36-10:37)</p> <p>1 the owner, voluntary consent or exigent circumstances,</p> <p>2 the FBI agent would need a search warrant, correct?</p> <p>3 MS. WYER: Objection.</p> <p>4 A. Absent the 2257 inspection, that's correct.</p> <p>5 Q. (By Mr. Murray) Now, there is a 2257</p> <p>6 checklist that is the next tab; is that correct?</p> <p>7 A. That's correct.</p> <p>8 Q. And it begins with what's known as a Review</p> <p>9 Form, a Pre-inspection Product Review, correct?</p> <p>10 A. That's correct.</p> <p>11 Q. And this particular inspector was</p> <p>12 whom you've identified before, correct?</p> <p>13 A. That's correct.</p> <p>14 Q. And there's a title of the DVD, correct?</p> <p>15 A. That's correct.</p> <p>16 Q. And then there's some premarked questions that</p> <p>17 she's supposed to check, correct?</p> <p>18 A. That's correct.</p> <p>19 Q. And, for example, the very first one is -- you</p> <p>20 say the "product is a" and it could be a book, a</p> <p>21 magazine, it could be a periodical, for example,</p> <p>22 correct?</p> <p>23 A. That's correct.</p> <p>24 Q. It could be a film, correct?</p> <p>25 A. That's correct.</p>

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<p style="text-align: right;">Page 81</p> <p>(10:38-10:39)</p> <p>1 Q. Could be a videotape, correct?</p> <p>2 A. Correct.</p> <p>3 Q. Could be a digitally or computer-manipulated</p> <p>4 image?</p> <p>5 A. Correct.</p> <p>6 Q. Could be a digital image?</p> <p>7 A. Correct.</p> <p>8 Q. Could be just a picture, correct?</p> <p>9 A. Correct.</p> <p>10 Q. Or it could be an internet computer site or</p> <p>11 service, correct?</p> <p>12 A. That's correct.</p> <p>13 Q. Or it could be any other matter, correct?</p> <p>14 A. That's correct.</p> <p>15 Q. And that's because all of those various types</p> <p>16 of items, if they portray a sexually explicit image,</p> <p>17 are subject to 2257, correct?</p> <p>18 A. That's correct.</p> <p>19 MS. WYER: Objection.</p> <p>20 Q. (By Mr. Murray) Now, then there's a place on</p> <p>21 this report for a post -- an on-site inspection</p> <p>22 review, correct?</p> <p>23 A. What page is that?</p> <p>24 Q. If you go to page 37. Is that correct?</p> <p>25 A. That's correct.</p>	<p style="text-align: right;">Page 83</p> <p>(10:40-10:42)</p> <p>1 A. Correct.</p> <p>2 Q. And you indicated that they were determined to</p> <p>3 be out of compliance, but they were able to resolve</p> <p>4 the one violation, correct?</p> <p>5 A. That's correct.</p> <p>6 Q. They came up with a system to match the true</p> <p>7 name to the stage name?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Okay. So that took about three hours, I think</p> <p>10 we indicated; is that correct?</p> <p>11 A. 9:30 to 12:30. Correct.</p> <p>12 Q. Let me show you what's been marked Plaintiff's</p> <p>13 Exhibit 2 which is Exhibit Serial 12.</p> <p>14 You didn't find any underage performers in</p> <p>15 that first inspection that we went through, did you?</p> <p>16 A. That's correct.</p> <p>17 Q. And by "underage," that would be someone</p> <p>18 younger than 18, correct?</p> <p>19 A. That's correct.</p> <p>20 Q. All right. Do you have Plaintiff's Exhibit 2</p> <p>21 in front of you, Agent Joyner?</p> <p>22 A. Yes, I do.</p> <p>23 Q. And just so that we're clear, with respect to</p> <p>24 Plaintiff's Exhibit 1 and I think you'll probably</p> <p>25 agree that with respect to all of these reports, they</p>
<p style="text-align: right;">Page 82</p> <p>(10:39-10:40)</p> <p>1 Q. And is that completed on the premises or after</p> <p>2 you leave?</p> <p>3 A. That's on premises.</p> <p>4 Q. Okay. So, while the contract agents and</p> <p>5 you -- well, describe how it works. If you've got</p> <p>6 five or six people there, what are your -- you know,</p> <p>7 who is doing what so that you don't fall over each</p> <p>8 other looking at these records?</p> <p>9 A. They each reviewed a DVD. So, in this case,</p> <p>10 she reviewed this one particular DVD. So</p> <p>11 she's responsible for that DVD. She would have the</p> <p>12 records for that DVD, the 2257 records, and she</p> <p>13 would -- each one would have their own assignment</p> <p>14 based on what they reviewed.</p> <p>15 Q. Okay. What would your assignment be? Just to</p> <p>16 supervise it?</p> <p>17 A. Yes, and then to write up the final report.</p> <p>18 Q. Okay. All right. So those -- I won't go over</p> <p>19 all of those. But each DVD would have that same</p> <p>20 pre-inspection and on-site inspection checklist,</p> <p>21 correct?</p> <p>22 A. Yes, sir.</p> <p>23 Q. And then the last page, page 84, would</p> <p>24 indicate whether the producer was compliant or not,</p> <p>25 correct?</p>	<p style="text-align: right;">Page 84</p> <p>(10:42-10:43)</p> <p>1 were created at or near the time when the events</p> <p>2 occurred, correct?</p> <p>3 A. Yes, sir.</p> <p>4 Q. By persons with knowledge of the events that</p> <p>5 they recorded in them, correct?</p> <p>6 A. Yes, sir.</p> <p>7 Q. And they were kept in the ordinary course of</p> <p>8 business and maintained in the ordinary course of</p> <p>9 business by the Federal Bureau of Investigation?</p> <p>10 A. That's correct.</p> <p>11 Q. All right. So this was an inspection of</p> <p>12 also known as Filmco</p> <p>13 Productions, correct?</p> <p>14 A. Yes, sir.</p> <p>15 Q. And this one -- if you go to page 92, this one</p> <p>16 was done by Supervisory Special Agent Lawrence,</p> <p>17 correct?</p> <p>18 A. That's correct.</p> <p>19 Q. And by the time he got on-board, he was given</p> <p>20 full information about the program that you had set</p> <p>21 up?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Correct?</p> <p>24 A. Yes, sir.</p> <p>25 Q. And he was given any training that he needed</p>

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<p style="text-align: right;">Page 85</p> <p>(10:43-10:44)</p> <p>1 to carry out his duties, correct?</p> <p>2 A. Yes, sir.</p> <p>3 Q. And, in fact, all of the inspections were --</p> <p>4 regardless by whom they were done, were to follow a</p> <p>5 certain protocol, correct?</p> <p>6 A. That's correct.</p> <p>7 Q. All right. So, on this occasion, this one was</p> <p>8 done by Special Agent Lawrence, correct?</p> <p>9 A. Yes, sir.</p> <p>10 Q. July 23, '07, correct, is the date of the</p> <p>11 report?</p> <p>12 A. That's correct.</p> <p>13 Q. And the date of the inspection was June 19,</p> <p>14 2007; is that correct?</p> <p>15 A. June 19th. Correct.</p> <p>16 Q. Do you know whether you went with him on this</p> <p>17 one?</p> <p>18 A. It doesn't look familiar.</p> <p>19 Q. Okay.</p> <p>20 A. The name doesn't ring a bell to me. So I</p> <p>21 don't think so.</p> <p>22 Q. Okay. This would indicate that he was</p> <p>23 on-board as early as June of '07. Well, actually, I</p> <p>24 think you said November of '06 he was already</p> <p>25 on-board, correct?</p>	<p style="text-align: right;">Page 87</p> <p>(10:46-10:47)</p> <p>1 Q. All right. Now, if you go to page 98 -- are</p> <p>2 you there?</p> <p>3 A. Not yet.</p> <p>4 Q. Okay.</p> <p>5 A. Okay.</p> <p>6 Q. Again, this same format that we saw in</p> <p>7 Plaintiff's Exhibit 1 is followed in this exhibit as</p> <p>8 well, correct?</p> <p>9 A. It looks like the same format. Yes.</p> <p>10 Q. You've got the pre-inspection procedures,</p> <p>11 correct?</p> <p>12 A. Yes.</p> <p>13 Q. And then you've got the inspection procedures,</p> <p>14 correct?</p> <p>15 A. Yes.</p> <p>16 Q. In this case, the inspection began at about</p> <p>17 11:00 a.m., correct?</p> <p>18 A. That's what it states. Yes.</p> <p>19 Q. And if you look at paragraph 4, it appears</p> <p>20 that Agent Lawrence provided with the same</p> <p>21 type of letter that we saw in Plaintiff's Exhibit 34,</p> <p>22 correct?</p> <p>23 A. Yes, sir.</p> <p>24 Q. And, again, before the inspection began, they</p> <p>25 took digital photographs of the business location, the</p>
<p style="text-align: right;">Page 86</p> <p>(10:44-10:46)</p> <p>1 A. I think it was November, December '06. I'm</p> <p>2 not certain when.</p> <p>3 Q. Okay. In any case, that inspection occurred</p> <p>4 on June 19, '07, correct?</p> <p>5 A. Yes, sir.</p> <p>6 Q. And was the owner and the</p> <p>7 custodian of records who was present throughout the</p> <p>8 inspection, correct?</p> <p>9 MS. WYER: Objection.</p> <p>10 Q. (By Mr. Murray) According to this report.</p> <p>11 A. According to this report, yes.</p> <p>12 Q. And according to Agent Lawrence, after the one</p> <p>13 inspection -- after the inspection, it was determined</p> <p>14 that Bacchus had one violation. Another violation was</p> <p>15 fixed prior to the completion of the inspection,</p> <p>16 correct?</p> <p>17 A. That's what it states.</p> <p>18 Q. Okay. Now, the other thing is that some of</p> <p>19 these records show that the producer gives a response</p> <p>20 to the findings, correct?</p> <p>21 A. That's correct.</p> <p>22 Q. And whatever the producer said in response to</p> <p>23 any violation findings is also recorded in these</p> <p>24 documents, correct?</p> <p>25 A. It is in this one. Yes.</p>	<p style="text-align: right;">Page 88</p> <p>(10:47-10:48)</p> <p>1 records storage, and the working area where they</p> <p>2 carried out the inspection, correct?</p> <p>3 A. Yes, sir.</p> <p>4 Q. And in paragraph 7, in this case, they</p> <p>5 actually made copies of the identifications of</p> <p>6 selected performers, correct?</p> <p>7 A. That's correct.</p> <p>8 Q. So you would go out to the premises sometimes</p> <p>9 with an actual copying machine of some kind, a</p> <p>10 portable copying machine?</p> <p>11 A. Yes. We always went with a copy machine.</p> <p>12 Q. And, so, in many cases, you would actually</p> <p>13 copy some of these records and take them with you,</p> <p>14 correct?</p> <p>15 MS. WYER: Objection.</p> <p>16 A. It has been six, seven years. If I recall, we</p> <p>17 copied all of the 2257 records --</p> <p>18 Q. (By Mr. Murray) Okay. All right.</p> <p>19 A. -- for those items that were selected.</p> <p>20 Q. All right. So you come out to the premises</p> <p>21 with a portable machine. You'd examine the records</p> <p>22 and then you would make copies of them and you would</p> <p>23 take the copies of those records with you?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Again, all without a warrant? You never got a</p>

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<p style="text-align: right;">Page 89</p> <p>(10:48-10:50)</p> <p>1 warrant to remove copies from the premises, did you?</p> <p>2 MS. WYER: Objection.</p> <p>3 A. None was required.</p> <p>4 Q. (By Mr. Murray) Did you get one?</p> <p>5 A. A warrant? No.</p> <p>6 Q. Okay. And then this inspection lasted, it</p> <p>7 looks like, about 2 hours and 45 minutes, is that</p> <p>8 correct, if you go to page 99?</p> <p>9 A. Yeah. It ended at 1:45 p.m.</p> <p>10 Q. Okay. Now, if you would take a look at page</p> <p>11 115, it would appear that on that occasion Agent</p> <p>12 Lawrence actually did an interview of this</p> <p>13 , correct?</p> <p>14 A. Yes.</p> <p>15 Q. Now, if you look at page 120 --</p> <p>16 A. Okay.</p> <p>17 Q. -- there's a picture of the front door of the</p> <p>18 premises; is that correct?</p> <p>19 A. It's a door. I wasn't there, but it looks</p> <p>20 like a door to some building with a listing of</p> <p>21 companies that are in that building. It appears to be</p> <p>22 a front door. You can see out into the parking lot.</p> <p>23 Q. Right. Okay. Then look at the next page.</p> <p>24 A. Okay.</p> <p>25 Q. That's a photograph of several file cabinets,</p>	<p style="text-align: right;">Page 91</p> <p>(10:51-10:52)</p> <p>1 regulations, and if an FBI wanted to enter these</p> <p>2 premises to examine the records contained in those</p> <p>3 file cabinets, without exigent circumstances or</p> <p>4 voluntary consent, the FBI agent would need to get a</p> <p>5 search warrant, correct?</p> <p>6 MS. WYER: Objection.</p> <p>7 A. That's the same question as before. And the</p> <p>8 answer is yes. If it was absent the 2257 inspection,</p> <p>9 as part of a criminal investigation, yes, you would</p> <p>10 need a warrant.</p> <p>11 Q. (By Mr. Murray) Okay. Now go to the next</p> <p>12 page.</p> <p>13 A. Okay.</p> <p>14 Q. That's a picture of somebody's desk, correct?</p> <p>15 A. Yes.</p> <p>16 Q. With a computer, correct?</p> <p>17 A. Yes.</p> <p>18 Q. There's some headphones on the wall, correct?</p> <p>19 A. Yes.</p> <p>20 Q. There's a calendar for 2007, correct?</p> <p>21 A. Yes, sir.</p> <p>22 Q. There's paper on the desk, correct?</p> <p>23 A. Yes, sir.</p> <p>24 Q. There's a paper. It looks like it's on the</p> <p>25 wall there or --</p>
<p style="text-align: right;">Page 90</p> <p>(10:50-10:51)</p> <p>1 correct?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Two of them opened; is that correct?</p> <p>4 A. Yes, sir.</p> <p>5 Q. With records inside, correct?</p> <p>6 A. Yes, sir.</p> <p>7 Q. And according to the photo log, it indicates</p> <p>8 that's the 2257 cabinets, hard copies. See that photo</p> <p>9 log?</p> <p>10 A. Yes, I do.</p> <p>11 Q. So that would coincide with that picture?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Now, that picture does not depict an area that</p> <p>14 appears to be open to the general public, does it?</p> <p>15 MS. WYER: Objection; foundation.</p> <p>16 A. I wouldn't know.</p> <p>17 Q. (By Mr. Murray) Well, does it -- is there any</p> <p>18 indicia of a premises that is open to the general</p> <p>19 public in that picture?</p> <p>20 MS. WYER: Objection.</p> <p>21 A. It's a very poor quality photograph, and about</p> <p>22 the only thing I can make out are the file cabinets</p> <p>23 and maybe a printer. The rest of it is pretty dark.</p> <p>24 Q. (By Mr. Murray) In any case, it is true, is</p> <p>25 it not, that, absent 2257 and its implementing</p>	<p style="text-align: right;">Page 92</p> <p>(10:52-10:54)</p> <p>1 A. Yes.</p> <p>2 Q. -- tacked to the wall?</p> <p>3 A. Yes, sir.</p> <p>4 Q. And look at the next page.</p> <p>5 A. Okay.</p> <p>6 Q. That appears to be a room with a table and</p> <p>7 chairs and a microwave oven, correct?</p> <p>8 A. Uh-huh. The photo log described it as a break</p> <p>9 room.</p> <p>10 Q. Okay. And by "break room," where employees</p> <p>11 might go to have their lunch type thing? That's what</p> <p>12 you mean by "break room"?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Well, it is true that, both with respect to</p> <p>15 the photograph on page 122 and on 123, those are areas</p> <p>16 of a premises where, absent 2257, if an FBI agent</p> <p>17 wanted to enter those areas and he didn't have</p> <p>18 voluntary consent and he didn't have exigent</p> <p>19 circumstances, he would have to obtain a search</p> <p>20 warrant to enter those premises to conduct a criminal</p> <p>21 investigation, correct?</p> <p>22 MS. WYER: Objection. Lack of foundation</p> <p>23 and calls for speculation.</p> <p>24 A. Any location that we went into was determined</p> <p>25 by the producer. They determined where the records</p>